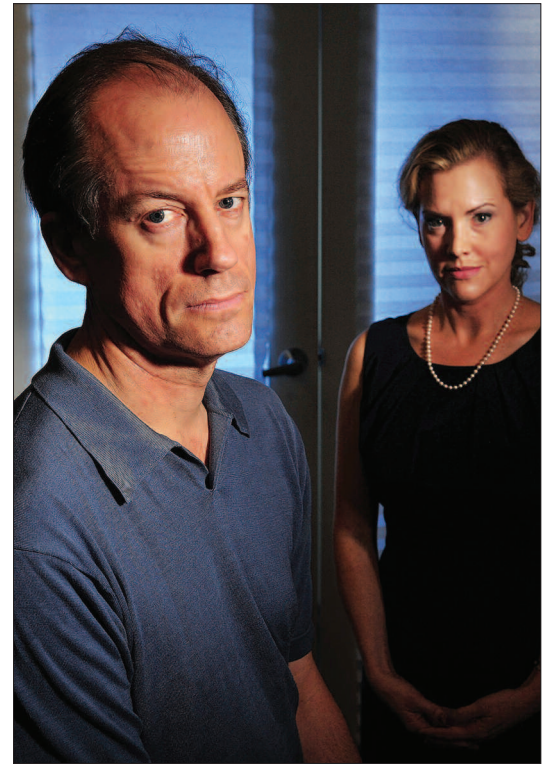


Whistleblowers

Is support growing for employees who expose misdeeds?

Whistleblowing is drawing increased attention as more workers in government and the private sector come forward to decry what they contend are waste, fraud, abuse and illegal activities in the workplace. Civil libertarians have derided President Obama for his tough approach to high-profile national security leakers, such as former National Security Agency contractor Edward Snowden. But Obama has won praise for his efforts in areas relating to non-national security whistleblowing, including appointing an official who has strengthened the federal agency that represents government whistleblowers. Meanwhile, whistleblower advocates and national security experts are debating whether Snowden and other such leakers qualify as whistleblowers. Congress has passed several laws relating to whistleblowing over the last 25 years, but experts question how well some are working. Advocates expect whistleblowing to become easier because of technological advances and to gain even more widespread public acceptance.



Thomas Drake and Jesselyn Radack paid high prices for whistleblowing. Drake, a former National Security Agency executive, lost his job after revealing cost overruns with an NSA spying program. Radack, a former Justice Department ethics adviser, received a negative performance review after revealing FBI ethics violations involving the interrogation of "American Taliban" John Walker Lindh. She is now a director at the Government Accountability Project, a whistleblower support group.

THIS REPORT

INSIDE

- THE ISSUES99
- BACKGROUND106
- CHRONOLOGY107
- CURRENT SITUATION110
- AT ISSUE113
- OUTLOOK114
- BIBLIOGRAPHY118
- THE NEXT STEP119

**CQ Researcher • Jan. 31, 2014 • www.cqresearcher.com
Volume 24, Number 5 • Pages 97-120**

	<u>THE ISSUES</u>	
99	<ul style="list-style-type: none"> • Are national security leakers whistleblowers? • Are federal whistleblowers adequately protected? • Are private-sector whistleblowers adequately protected? 	101
	<u>BACKGROUND</u>	
106	'Lincoln Law' Congress enacted the False Claims Act in 1863.	107
109	Vietnam and Watergate Disillusionment with the war and Nixon administration fueled skepticism.	108
110	Famous Whistleblowers Insiders disclosed wrongdoing during the 1990s.	111
	<u>CURRENT SITUATION</u>	
110	Congressional Action Bills would bolster protections.	113
112	State and Court Actions States are broadening their whistleblower laws.	
	<u>OUTLOOK</u>	
114	Contagious Courage? Technology is likely to encourage whistleblowing.	
	<u>SIDEBARS AND GRAPHICS</u>	
100	Whistleblower Judgments Total \$27 Billion More than half the amount collected stemmed from medical cases.	
	Whistleblowing on the Rise SEC and Defense Department see tips increase.	
	Sen. Grassley: Patron Saint of Whistleblowers "He's the only true hope that whistleblowers have."	
	Chronology Key events since 1968.	
	Unique Group Defuses Nuclear Whistleblower Cases Panel at Hanford facility in Washington state is model for avoiding legal battles.	
	Whistleblower Cases from Doping to Medicare Fraud Cases involve government and private employees, including disgraced cyclist Lance Armstrong.	
	At Issue: Can Edward Snowden be considered a whistleblower?	
	<u>FOR FURTHER RESEARCH</u>	
	For More Information Organizations to contact.	
	Bibliography Selected sources used.	
	The Next Step Additional articles.	
	Citing <i>CQ Researcher</i> Sample bibliography formats.	

Jan. 31, 2014
Volume 24, Number 5

MANAGING EDITOR: Thomas J. Billitteri
tjb@sagepub.com

ASSISTANT MANAGING EDITOR: Kathy Koch,
kathy.koch@sagepub.com

SENIOR CONTRIBUTING EDITOR:
Thomas J. Colin
tom.colin@sagepub.com

CONTRIBUTING WRITERS: Marcia Clemmitt,
Sarah Glazer, Kenneth Jost, Peter Katel,
Reed Karaim, Barbara Mantel, Tom Price,
Jennifer Weeks

SENIOR PROJECT EDITOR: Olu B. Davis

FACT CHECKERS: Michelle Harris,
Nancie Majkowski

INTERNS: Kaya Yurieff



Los Angeles | London | New Delhi
Singapore | Washington DC

An Imprint of SAGE Publications, Inc.

**VICE PRESIDENT AND EDITORIAL DIRECTOR,
HIGHER EDUCATION GROUP:**
Michele Sordi

**EXECUTIVE DIRECTOR, ONLINE LIBRARY AND
REFERENCE PUBLISHING:**
Todd Baldwin

Copyright © 2014 CQ Press, an imprint of SAGE Publications, Inc. SAGE reserves all copyright and other rights herein, unless previously specified in writing. No part of this publication may be reproduced electronically or otherwise, without prior written permission. Unauthorized reproduction or transmission of SAGE copyrighted material is a violation of federal law carrying civil fines of up to \$100,000.

CQ Press is a registered trademark of Congressional Quarterly Inc.

CQ Researcher (ISSN 1056-2036) is printed on acid-free paper. Published weekly, except: (March wk. 4) (May wk. 4) (July wk. 1) (Aug. wks. 3, 4) (Nov. wk. 4) and (Dec. wks. 3, 4). Published by SAGE Publications, Inc., 2455 Teller Rd., Thousand Oaks, CA 91320. Annual full-service subscriptions start at \$1,054. For pricing, call 1-800-818-7243. To purchase a *CQ Researcher* report in print or electronic format (PDF), visit www.cqpress.com or call 866-427-7737. Single reports start at \$15. Bulk purchase discounts and electronic-rights licensing are also available. Periodicals postage paid at Thousand Oaks, California, and at additional mailing offices. POSTMASTER: Send address changes to *CQ Researcher*, 2300 N St., N.W., Suite 800, Washington, DC 20037.

Whistleblowers

BY CHUCK MCCUTCHEON

THE ISSUES

Years before National Security Agency (NSA) contractor Edward Snowden exposed details about the agency's questionable spying activities last June, whistleblower Thomas Drake did something similar — and paid a stiff price.

Drake, who was a senior executive at the NSA, gave information in 2005 and 2006 to a reporter regarding cost overruns and other problems with a controversial agency spying program. Although in 2011 he won a legal battle over whether he broke the law, by then he had lost his high-paying agency job, his security clearance and his life savings. He now works at an Apple computer store near Washington, D.C.

Nevertheless, Drake says he'd do it all again.

"I could not idly stand by silent and watch billions and billions of dollars going down the drain," he told an audience at a September 2013 event organized by the Government Accountability Project, a Washington-based group advocating on behalf of those who expose workplace wrongdoing. "We're the canaries in the constitutional coal mine, we as whistleblowers."¹

Whistleblowing is drawing increased attention in the wake of the Snowden revelations and as more government and private-sector employees come forward to reveal what they contend are waste, fraud, abuse and illegal activities in the workplace. But Snowden and other national security leakers have stirred debate about whether they qualify as whistleblowers. And while Congress has



Getty Images/Barton Gellman

Former National Security Agency contractor Edward Snowden touched off an intense debate over whistleblowing when he leaked details of extensive NSA surveillance programs last year. Snowden is now in Moscow, where he fled to avoid prosecution. Whistleblowing by government and private-sector employees is on the rise, but the actions of Snowden and other leakers have raised questions about whether they qualify as whistleblowers or should be considered criminals. Congress has passed several laws over the past quarter-century aimed at encouraging whistleblowing, but some experts question their effectiveness.

passed various laws over the past 25 years aimed at encouraging the practice, experts question their effectiveness.

Yet whistleblowing is on the rise. The Securities and Exchange Commission (SEC) reported in November that tips from corporate employees under the Dodd-Frank financial industry reform law's whistleblower program had risen 8 percent from fiscal 2012 to fiscal 2013.² And calls to the Defense Department's whistleblower hotline rocketed by 125 percent from 2009 to 2013, reaching a high of 31,000 contacts in 2012.³ In Michigan, whistleblower lawsuits rose 112 percent during a recent eight-year period.⁴

Moreover, a record \$3.3 billion in taxpayer money was recovered in 2012 due to civilian whistleblowers' reports of fraudulent claims against the federal government, much of it due to health care fraud. Awards to whistleblowers for their revelations of wrongdoing also are on the rise. In 2012 whistleblowers received a record high of nearly \$560 million for their help in uncovering fraud.⁵ (See *graph, p. 100.*) Under the False Claims Act, whistleblowers receive a portion of the money recovered if their disclosures result in confessions or convictions in federal fraud cases. In October, the SEC awarded \$14 million to an unidentified whistleblower for helping with an investigation. The agency previously had never paid more than \$125,000 in an individual case.⁶

Experts say whistleblowing will continue to increase as technological advances make it easier to go online to report wrongdoing anonymously and as deepening skepticism toward government and corporate behavior leads to greater public acceptance of the practice. "There is a trend toward greater public support for whistleblowing and a stronger sense that whistleblowers should be supported, rather than it just being assumed that they are always destined to suffer as martyrs," says A. J. Brown, a public policy and law professor at Australia's Griffith University who studies the issue in the United States.

Perhaps the two best-known employees to reveal information about their employers are Snowden and Pfc. Bradley Manning, the Army soldier sentenced in August 2013 to 35 years in prison for providing classified government documents to the antisecrecy

Whistleblower Judgments Total \$27 Billion

Since Congress overhauled the 123-year-old False Claims Act in 1986, the federal government has collected more than \$27 billion in settlements and judgments against individuals and companies whose fraudulent dealings with the government were exposed by whistleblower-initiated lawsuits. More than half of that amount stemmed from health-care related cases tied to soaring medical costs. Of the \$27 billion that has been recovered, whistleblowers have been awarded about \$4.3 billion.



Source: "Fraud Statistics — Overview, Oct. 1, 1987-Sept. 30, 2013," Civil Division, U.S. Department of Justice, www.justice.gov/civil/docs_forms/C-FRAUDS_FCA_Statistics.pdf

website WikiLeaks. Snowden revealed that the NSA was amassing data on people across the globe — including email, Facebook posts and instant messages — as well as collecting in bulk the customer phone records of U.S. phone companies. The day after the sentencing Pvt. Manning expressed a desire to live as a woman and changed her name to Chelsea.

But debate has raged over whether national security leakers such as Manning and Snowden qualify as whistleblowers, reflecting an ongoing controversy over the correct definition of the term.⁷ The Government Accountability Project, which uses a composite definition based on state, federal and international cases, defines whistleblowing as the disclosure of information that a worker reasonably believes represents evidence of illegality, gross waste or fraud, mismanagement, abuse of power, general wrongdoing or a substantial and specific danger to public health and safety. Typically, the group says,

whistleblowers speak out to whomever — the media, organizational managers or congressional staffs — they feel can bring about change.⁸

In addition, say other experts, a whistleblower's decision isn't intended to cause harm to the organization but rather to enable it to fix its problems.⁹

Whistleblowers generally are people who value fairness over loyalty, according to studies. Those studies have debunked the once-common perception that whistleblowers are disgruntled employees with an ax to grind; one researcher found that a typical whistleblower is someone who is firmly committed to an organization and has a highly developed sense of morality.¹⁰

In addition, says Beatrice Edwards, the Government Accountability Project's executive director, whistleblowers often share another trait: They're smokers who overhear a wide range of office talk while standing outside during cigarette breaks. "They [develop] these vertical networks," Ed-

wards says. "They talk to people who are senior executive service, and then they talk to somebody who is support staff." Normally, in a bureaucracy, she says, "you usually only know what's going on at your level."

Studies show that whistleblowers risk losing their jobs and income and are susceptible to divorce and mental and physical problems.¹¹ At the group's September whistleblower event, Drake recounted how FBI agents raided his home and carted off boxes of files several years after he contacted a *Baltimore Sun* reporter to discuss cost overruns and other problems with NSA's Trailblazer project, which was designed to track people via cellphone and email. It was subsequently canceled, but its goal was similar to snooping programs the agency later developed and that Snowden revealed in 2013.¹²

Drake says that although he never provided the reporter with any classified or sensitive information, he was charged in 2010 with violating the Espionage Act and could have received a maximum prison term of 35 years. A year later, the espionage charges were dropped after a judge found no evidence that any of the classified material recovered at his home was the basis for the *Sun's* articles.

"Imagine the government throwing everything they have at you because you happen to hold up a mirror to them, literally just because I was trying to do my job," he says. "There are times that I wake up in a cold sweat."

As for the current administration, civil libertarians have derided President Obama for his tough approach to national security leakers like Manning and Snowden. Obama has used the World War I-era Espionage Act seven times to prosecute federal employees for revealing information about government's inner workings — more than the four prosecuted under all previous administrations combined.¹³ But government watchdog groups have praised the president for his efforts in

other areas relating to whistleblowing, including helping to steer into law in 2012 a bill to expand federal whistleblowers' protections.

As whistleblower advocates, employees, lawmakers and the national security establishment debate whistleblowing, here are some of the questions under discussion:

Are national security leakers whistleblowers?

Supporters of national security leakers hail them as courageous civil servants — and, by extension, whistleblowers — for their willingness to buck the system and expose what they regard as serious wrongdoing.

One of Snowden's most prominent supporters is Daniel Ellsberg, who was behind the release in 1971 of the Pentagon Papers revealing that the U.S. government secretly had enlarged the scope of the Vietnam War. He said Snowden exposed the Obama administration's disregard for personal privacy.

"Snowden's whistleblowing gives us the possibility to roll back a key part of what has amounted to an 'executive coup' against the U.S. Constitution," wrote Ellsberg.¹⁴

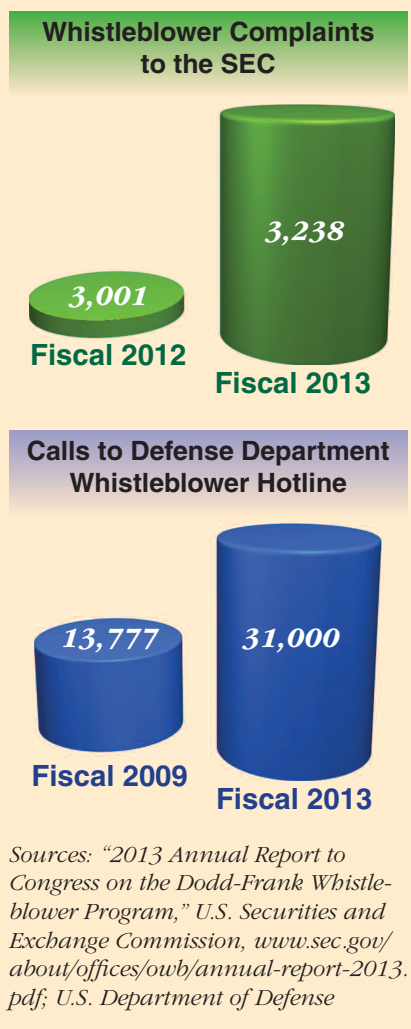
But Obama administration officials and others in the national security world say anyone who releases classified or sensitive information that could potentially harm Americans' security doesn't deserve the description.

"The definition of a whistleblower depends on the context," says Richard Moberly, associate dean of the University of Nebraska College of Law, who has written extensively about the issue. "Outside of national security, we tend to think [of it] very broadly — not only illegal activity, but abuses of power, fraud, financial misconduct and even unethical choices." However, he adds, employees who are entrusted with classified material "should be more limited in how and what to disclose."¹⁵

A case involving former CIA officer Jeffrey Sterling reveals how those

Whistleblowing on the Rise

Tips to the Securities and Exchange Commission (SEC) about corporate wrongdoing rose 8 percent from 2012 to 2013 (top). Experts say the rise is due in part to the 2010 Dodd-Frank financial industry reform law, which protects private-sector whistleblowers. Whistleblower complaints also are on the rise at the Defense Department, where calls to a whistleblower hotline jumped 125 percent from 2009 to 2013 (bottom).



on both sides of this issue view disclosures by national security employees differently.

Sterling was indicted in December 2010 and arrested the following month on charges of providing *New York Times* reporter James Risen with information about CIA efforts to sabotage Iran's nuclear weapons program. The CIA had fired Sterling, who is African-American, in 2002 after he filed a complaint alleging racial discrimination at the agency. After two failed settlement attempts, he filed a discrimination lawsuit, but the government said a court hearing on the case would reveal classified information. A judge dismissed the case in 2005, and the Supreme Court rejected Sterling's appeal the following year.¹⁶

"Jeffrey Sterling is not a whistleblower," says former Justice Department spokesman Matthew Miller, who is now a partner in a management consulting firm. "He was fired for cause. He went to court and the case was thrown out. No waste, fraud or abuse was involved."

But former *Washington Post* executive editor Leonard Downie Jr., in a 2013 report for the Committee to Protect Journalists, called such a distinction "disturbing." Further, he explained, "Exposing 'waste, fraud and abuse' is considered to be whistleblowing. But exposing questionable governmental policies and actions, even if they could be illegal or unconstitutional, is often considered to be leaking that must be stopped and punished."¹⁷

In the Manning case, defense attorney David Coombs disputed the government's assertion that the Army intelligence analyst was a traitor for passing some 750,000 military and diplomatic pages to WikiLeaks, which were subsequently published in *The New York Times* and other newspapers. Manning was a whistleblower who was "not seeking attention" for himself, said Coombs.¹⁸

Manning's supporters contend that the documents he turned over were far more embarrassing than damaging to national security. "How many civilian

Sen. Grassley: Patron Saint of Whistleblowers

“He’s the only true hope that whistleblowers have.”

For three decades, Iowa Republican Sen. Chuck Grassley has had a bipartisan reputation as the patron saint of whistleblowers.

Grassley has sponsored or cosponsored most major legislation on the issue, including the groundbreaking 1989 Whistleblower Protection Act and the law’s enhancements in 1994 and 2012. Early in Barack Obama’s presidency, Grassley publicly pressed Obama to hold a White House Rose Garden ceremony honoring those who risk their jobs to expose malfeasance, and in July he got the Senate to pass a resolution establishing a “National Whistleblower Day.”

“Anything we can do to uphold whistleblowers and their protection is the right thing to keep government responsible,” Grassley said. “If you know laws are being violated and money’s being misspent, you have a patriotic duty to report it.”¹

Whistleblower advocates say Grassley has been instrumental in making the activity more accepted both inside and outside government. In 2007, 25 public interest groups gave the senator a lifetime achievement award.²

Former FBI agent Jane Turner said the senator has led many frustrated federal workers to turn to his office instead of simply leaking information to the media. Turner worked with Grassley on controversies such as bureau staffers’ thefts of a Tiffany crystal globe and other artifacts from Ground Zero after the Sept. 11 terrorist attacks.

“Without Grassley, you would have tenfold more Snowdens [and] Wikileaks, because he’s the only true hope that whistleblowers have,” Turner said, referring to former National Security Agency contractor Edward Snowden.³

Grassley’s efforts also have won him respect from Democrats such as Vermont’s Patrick Leahy, chairman of the Senate Judiciary Committee. The two have combined on numerous

whistleblower-related issues.

“When he’s wanted to open an investigation during the time I’ve been chairman, I just say, ‘Fine,’ ” Leahy said. “He has that kind of credibility.”⁴

Grassley, who is the Judiciary Committee’s ranking Republican, has several aides who work on whistleblower-related matters. They field thousands of complaints each year from throughout the federal bureaucracy.

John Dodson, a special agent for the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) worked with Grassley’s staff when he blew the whistle on the “Operation Fast and Furious” gun-tracing scandal, in which the agency lost track of hundreds of firearms sold to straw purchasers for Mexican drug cartels. In October 2013, Grassley joined Rep. Darrell Issa, R-Calif., who chairs the House Oversight and Government Reform Committee, in condemning the ATF for seeking to block Dodson from publishing a book about the botched operation. The book, *The Unarmed Truth: My Fight to Blow the Whistle and Expose Fast and Furious*, was published in December.⁵

The Internal Revenue Service (IRS) has been another high-profile Grassley target. He complained in September that despite the IRS’ creation of a whistleblower office, the agency has dragged its heels processing cases and making financial rewards to workers who report wrongdoing.⁶

Unlike many of his congressional colleagues, Grassley isn’t a lawyer; he’s a plain-spoken farmer from rural Iowa. Admirers say that despite his years on Capitol Hill, he has remained closely attuned to voters’ demands for accountability from government.

“He has a good sense of the mind of a regular person,” says John McMickle, a former Grassley aide who is now a Washington attorney representing whistleblowers.

Grassley has pressed Republican as well as Democratic presi-

deaths can actually be traced to the WikiLeaks revelations? How many military deaths? To the best of anyone’s knowledge, not a single one,” wrote Chase Madar, author of a book on Manning, in a blog post picked up by the liberal *Mother Jones* magazine.¹⁹

But national security leakers face a serious legal handicap when trying to raise such questions. The Espionage Act contains no whistleblower protection language, and federal prosecutors in cases involving Manning and others have persuaded the courts that the intent of the leaker, along with the value of the leaks to the public and the lack of harm

caused by any leaks, is irrelevant and therefore inadmissible in court.²⁰

Snowden has sparked especially fierce debate as to what he should be called. “One Silicon Valley person I spoke to on the question of ‘whistleblower’ versus ‘traitor,’ his estimate was over 90 percent of the people in his company would say whistleblower,” said Georgia Tech professor Peter Swire, who served on a recent panel that Obama appointed to review NSA. “And I don’t think I’ve met a person in the intelligence community who would say ‘whistleblower.’ This is one of the biggest left coast-right coast splits we’ve seen.”²¹

Richard Haass, president of the Council on Foreign Relations think tank, is among those siding with the intelligence community. “Why is media using sympathetic word ‘whistleblower’ [for] Edward Snowden, who leaked secret NSA program?” Haass asked on Twitter. “He broke the law & made us less safe.”²²

Within days of the disclosures, The Associated Press stopped using that description for Snowden. The AP’s standards editor, Tom Kent, wrote in a memo that “whether the actions exposed by Snowden and Manning constitute wrongdoing is hotly contested,

dents to take the issue more seriously. He says he's been disappointed with Obama's record since hearing him proclaim his commitment to openness in government during his first presidential campaign.

"I can't say it's worse [than other presidents] under Obama, but it's not any better," Grassley says. "When you consider that he said he'd have the most transparent administration in the history of our country, if you use that benchmark, you could say he's the worst, but only against his own benchmark."

Grassley's involvement in whistleblowing started in 1983 during the Reagan administration, when he wanted to talk to Pentagon budget analyst Franklin C. "Chuck" Spinney, who was troubled about what he saw as wasteful military spending. But Defense Secretary Caspar Weinberger rebuffed the senator.

"Weinberger called me and said, 'We can't have you talk to these civil servants. We Republicans can't trust them,' " Grassley says.

The senator prevailed after threatening to subpoena Spinney to testify before the Senate Budget Committee's defense subcommittee. Not only did Spinney appear before the panel, he landed on the cover of *Time* for his comments about billions of dollars being wasted. The publicity helped launch a widespread effort to rein in the military's fiscal excesses that eventually led to contracting reforms, and Spinney has been a widely quoted expert about the issue ever since.⁷

These days, Grassley is pessimistic that federal agencies will do more to encourage whistleblowing. Among his legislative priorities is ensuring that private contractors for intelligence agencies — such as Snowden — are no longer exempt from whistleblower-protection statutes.

"The agencies aren't going to take any more steps, but we're going to pass more laws," he says. "What's going to really drive



Getty Images/CQ Roll Call/Tom Williams

Sen. Chuck Grassley, R-Iowa, has sponsored or cosponsored most major whistleblower legislation, including the 1989 Whistleblower Protection Act.

it is the demand by the grassroots of America for more transparency in government."

— **Chuck McCutcheon**

¹ Sharyn Jackson, "Whistleblowers' 'Hero' Pushes For Day in Their Honor," *Des Moines Register/USA Today*, July 29, 2013, www.usatoday.com/story/news/nation/2013/07/29/grassley-national-whistleblowers-day/2595347.

² "25 Whistleblower Advocacy Groups Present Senator Chuck Grassley with Lifetime Achievement Award," National Whistleblowers Center, May 17, 2007, www.whistleblowers.org/index.php?option=com_content&task=view&id=115.

³ Jackson, *op. cit.*

⁴ Thomas Beaumont, "As Political Landscape Shifts, Grassley Keeps Pace," *Des Moines Register*, Oct. 30, 2010, www.desmoinesregister.com/article/20100314/NEWS09/101030016/?nckick_check=1.

⁵ Tal Kopan, "Darrell Issa, Chuck Grassley Write ATF Over Book," *Politico*, Oct. 10, 2013, www.politico.com/story/2013/10/darrell-issa-chuck-grassley-fast-furious-book-98159.html.

⁶ Robert W. Wood, "Grassley Blows Whistle on IRS Whistleblower Program," *Forbes*, Sept. 30, 2013, www.forbes.com/sites/robertwood/2013/09/30/grassley-blows-whistle-on-irs-whistleblower-program.

⁷ "Chuck Spinney," *Time.com*, <http://nation.time.com/author/chuckspinney2>.

so we should not call them whistleblowers on our own at this point."²³

In a January online chat, Snowden said he initially went the internal whistleblowing route and "made tremendous efforts to report these programs to coworkers, supervisors, and anyone with the proper clearance who would listen." Their reactions, he said, "ranged from deeply concerned to appalled, but no one was willing to risk their jobs, families, and possibly even freedom."²⁴

Some of Snowden's supporters say U.S. District Judge Richard Leon appeared to settle the issue when he ruled last December that the NSA's telephone

snooping program was unconstitutional. *Wired* ran an article with the headline: "Finally, a Ruling That Recognizes Snowden as a Whistleblower."²⁵

Two weeks later, however, another U.S. district judge, William Pauley, ruled that the NSA's bulk collection of phone records under the USA Patriot Act was legal, which the anti-Snowden side saw as vindication.²⁶ Then in January, Snowden's backers were delighted when the Obama administration's Privacy and Civil Liberties Oversight Board said the NSA's phone-records collection program violates the law.

The issue is further complicated by

the legal protections that are not available to national security employees. The provisions of the Whistleblower Protection Enhancement Act, signed into law in 2012 to strengthen federal whistleblowers' rights, do not extend to the intelligence community. In an effort to give workers at spy agencies some rights, Obama in October 2012 issued an executive order encouraging such workers to work within the system or to go to Congress rather than to leak information.²⁷

But whistleblower advocates say the executive order lacks the force of law and that private contractors who

work for spy agencies — such as Snowden — aren't covered by it.

They say Obama confused the situation when he implied after the initial NSA leaks that Snowden was protected under the order. White House officials, however, have asserted that contractors do have whistleblower protections even if they are not explicitly mentioned in the executive order.²⁸

To clear up the situation, an expert panel that Obama formed in response to the Snowden leaks recommended in December that a new board be created as “an authorized recipient for whistleblower complaints.”²⁹

Sen. Chuck Grassley, R-Iowa, Congress' leading advocate for whistleblowers, says Snowden should be prosecuted because he is accused of breaking the law. At the same time, he says, Congress should pass “whistleblower protection for intelligence people.” (*See sidebar, p. 102.*)

The Senate Intelligence Committee in November passed a fiscal 2014 authorization bill that seeks to assist future would-be Snowdens. It would not give contractors the same protections from retaliation as regular employees, but it would create incentives for contractors to take their concerns to “the appropriate inspector general of the employing agency, a congressional intelligence committee or a member of a congressional intelligence committee.”³⁰

The provision faces an uncertain future in the House, however, where Intelligence Committee Chairman Mike Rogers, R-Mich., blocked similar language in 2012. “We hope that given the recent high-profile leaks of classified information, Chairman Rogers will reconsider his position,” said Angela Canterbury, director of public policy at the Project on Government Oversight, a Washington-based group that investigates government misconduct.³¹

Rogers has not commented publicly on the issue, but he has defended the NSA's surveillance efforts and said Congress does a serious job of ex-

amining accusations brought against the agency. “The question now isn't how you rein in the NSA,” he said in November. “The object is, listen, are they following the law, are they protecting civil liberties? That's what the oversight committees do.”³²

Snowden himself called for more protections for contractors. “There are so many holes in the laws, the protections they afford are so weak, and the processes for reporting . . . so ineffective that they appear to be intended to discourage reporting of even the clearest wrongdoing,” he said.³³

Are federal whistleblowers adequately protected?

Several federal laws, including the 1989 Whistleblower Protection Act, encourage U.S. government employees to report waste, fraud and abuse and aim to shield those who come forward. But whistleblower advocates say federal workers still trail private-sector employees in legal rights.

“Compared to the laws that Congress has enacted for the private sector, government employees are still second-class citizens,” says Tom Devine, the Government Accountability Project's legal director, who has worked on whistleblower issues since 1979.

Private-sector whistleblowers can sue their employers under a variety of laws, while their federal counterparts must go through a special administrative process.

Grassley says too many federal agency managers have little willingness to settle workplace complaints or deal with those who bring them. Grassley faults “the attitude of the bureaucracy toward whistleblowers . . . a culture throughout the executive branch of government that whistleblowers are bad.”

A 2010 survey on federal workers' attitudes toward whistleblowing found that the percentage of whistleblowers who felt they had been retaliated against (36 percent) had not changed substantially since 1992.³⁴

For 35 years, most federal employees have had the right to appeal to the Merit Systems Protection Board (MSPB), a quasijudicial agency composed of three presidential appointees, if they have felt they inappropriately have been fired or suspended or had their pay reduced. The Office of Special Counsel (OSC), an independent federal agency that investigates whistleblowing disclosures, defends whistleblowers against retaliatory personnel actions before the MSPB.³⁵

Whistleblower groups have criticized the board for being deaf to whistleblowers' complaints. In fiscal 2010, the board's administrative judges sided with federal agencies over whistleblowers in 95 percent of cases. That percentage has changed little in subsequent years.³⁶

“I'm not sure [federal workers] get adequate protection from the MSPB,” Grassley says.

In a 2012 law review article, Robert J. McCarthy, a former federal government lawyer and former law professor at the University of Washington and University of Idaho, attributed employees' poor track record to “extremely biased” judges who he said are “cut-rate agency servants” lacking congressionally mandated qualifications or independence.³⁷

The board rejects allegations of bias. James M. Eisenmann, its executive director, says more than half of all cases brought before administrative judges were dismissed in fiscal 2010 because of a lack of jurisdiction, and that another 27 percent of cases were settled. Eisenmann also dismisses criticism of judges' qualifications as “specious,” adding that they “are held to high legal standards” and that their decisions usually are upheld by federal courts.³⁸

Whistleblower advocacy groups also have criticized the Office of Special Counsel. Its director under former President George W. Bush, Scott Bloch, was forced to leave the agency in 2008 after allegations of retaliation against employees who challenged him. Bloch denied the

reprisal charges, but was sentenced in June 2013 to two years' probation and fined \$5,000 after pleading guilty to having private technicians erase files from his government computer.³⁹

After Bloch's departure, the office had no permanent director until June 2011, when Carolyn Lerner was appointed to the position. Whistleblower advocates have praised Lerner's efforts on behalf of whistleblowers, including successfully taking on the Defense Department last year over the mishandling of soldiers' remains at Delaware's Dover Air Force Base.⁴⁰

While working with whistleblowers during the last two years, the OSC has had record high numbers of so-called favorable actions, such as the rehiring of fired employees or the reprimanding of supervisors. For more than a decade, the office had fewer than 100 favorable actions a year, with a record low of 29 in 2007. But it achieved 159 favorable actions in 2012 and 160 through the first 11 months of 2013.⁴¹

Nevertheless, the agency's 110-person staff has remained unchanged in recent years, even as its workload and responsibilities have grown. That has slowed its processing time for whistleblower cases: In 2008, it processed 95 percent of its cases within eight months, but in 2013 that figure fell to 85 percent.⁴²

The OSC's improved performance on favorable actions has tempered whistleblower advocates' criticism of Obama, even as civil libertarians have condemned the president for being too harsh on national security leakers. "For non-national security/intelligence community whistleblowers, [the situation] has dramatically improved," said the Project on Government Oversight's Canterbury. "But for anyone making public disclosures about national security/intelligence wrongdoing, it is worse."⁴³

Whistleblower advocates also credit Obama with helping to get the Whistleblower Protection Enhancement Act adopted in November 2012. The law strengthened and expanded

whistleblowers' rights, and for the first time entitled them to compensatory legal damages in cases of wrongful reprisal, although it does not give them access to jury trials.

It also expanded protections for federal scientists and officers in the Transportation Security Administration (TSA), where some workers previously had lacked those rights, and for em-

Are private-sector whistleblowers adequately protected?

Corporate whistleblowing has drawn substantial attention over the past 15 years, and some whistleblowing experts say private employees have never had better protections. But others say the laws aren't working as well as they should and that more needs to be done.



Getty Images/The Washington Post/Bill O'Leary

An honor guard at Dover Air Force Base in Delaware carries the remains of an American soldier killed in an ambush in Afghanistan. Acting on tips from whistleblowers, Air Force investigators in November 2011 announced they had found "serious misconduct" and "gross mismanagement" in the handling of soldiers' remains by mortuary workers at the base. Whistleblower advocates have praised Carolyn Lerner, director of the Office of Special Counsel, for her support of whistleblowers, including successfully taking on the Defense Department over the base's treatment of soldiers' remains.

ployees who are not the first to disclose a case of misconduct. It also required federal agencies to create whistleblower ombudsmen at inspector general offices in the agencies to field employees' complaints.⁴⁴

The law "was a major step forward" in bringing federal employees' protections closer to what most of the private sector has, says Stephen Kohn, a Washington, D.C., lawyer who represents whistleblowers and has written several books on the subject. "We're not there yet, but we're closer."

In 2002, two whistleblowers — former Enron Corp. Vice President Sheron Watkins and WorldCom auditor Cynthia Cooper — were named *Time* magazine's "Persons of the Year" along with FBI agent Coleen Rowley, who revealed FBI incompetence before the Sept. 11, 2001, terrorist attacks.⁴⁵

Since then, Congress has enacted several significant laws that address private-sector whistleblowing, including:

- The 2002 Sarbanes-Oxley Act, which prohibits publicly traded companies and their subsidiaries from taking retaliatory

actions against employees who report suspicious behavior.

- The 2008 Consumer Product Safety Act, which prohibits manufacturers from discriminating against employees who report potential safety hazards to the Consumer Product Safety Commission.

- The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, which expanded protections for whistleblowers in the financial services industry.

- The 2011 Food and Drug Administration Food Safety Modernization Act, which bars the food industry from discriminating against workers who assist the agency on safety-related investigations.⁴⁶

“In the United States we think of our laws as being older and more staid, but the decade beginning this century has been the most active I can think of, particularly in the private-sector area,” says American University law professor Robert Vaughn, who studies whistleblowing.

Companies periodically have tried to blunt the impact of the new laws. For example, the U.S. Chamber of Commerce in 2011 backed a bill sponsored by House Republicans that would have required financial whistleblowers to report criminal activity internally in addition to filing a complaint with the SEC.⁴⁷ The chamber and its allies in the business community were concerned that whistleblowers would go directly outside the company to report suspicious activity.⁴⁸ Bill sponsor Rep. Michael Grimm, R-N.Y., said the legislation would maintain corporate whistleblower reporting processes that the Dodd-Frank law sought to dismantle.

“The overreaching provisions in Dodd-Frank make these internal programs obsolete, open the floodgates of claims to an already overburdened SEC and delay action on escalating crimes within a company,” Grimm said.⁴⁹

But whistleblower advocates argued that the bill undermined Dodd-Frank.⁵⁰ The bill died in the 112th Congress and has not resurfaced.

The advocates have had an ally in Obama, whom the University of Ne-

braska’s Moberly says has taken corporate whistleblowing seriously despite the president’s crackdown on the national security side.

“I think President Obama supports whistleblower protections in the private sector very strongly and has appointed people who share those concerns. . . . Whistleblower protections in the private sector don’t interfere with executive power,” Moberly says.⁵¹

U.S. whistleblower laws differ from those of other nations by offering government-sponsored rewards in cases in which the federal government is defrauded. In addition to the False Claims Act, a law enacted in 2006 pays whistleblowers who expose companies found guilty of trying to cheat the Internal Revenue Service (IRS) out of substantial amounts of income-tax money.⁵²

In 2012, the IRS awarded \$104 million to former banking executive Bradley Birkenfeld, who exposed tax evasion by Swiss banking company UBS AG. The company had paid \$780 million three years earlier to avoid criminal prosecution. The Birkenfeld award was the most ever granted to an individual in a whistleblower case.⁵³ The award came less than two months after Birkenfeld’s parole from prison, where he served time after pleading guilty to helping a client evade income taxes.

“The U.S. has had the biggest success in creating financial-reward strategies for whistleblowers,” Griffith University’s Brown says, explaining that the reward money comes from “a percentage of the value of the fraud or the penalties imposed for wrongdoing.”

To receive any money, “you have to be correct,” says Kohn, who represented Birkenfeld. “So it forces the whistleblower to carefully evaluate the merits of their concerns in deciding whether to take the risk of going forward.”

However, whistleblower advocates lament the institutional resistance that such programs have faced.

In 2010, former IRS Chief Counsel Donald Korb told the publication *Tax Notes*

that the provisions “have the potential to be a real disaster for the tax system. I believe that it is unseemly in this country to encourage people to turn in their neighbors and employers to the IRS as contemplated by this particular program.”

Whistleblower lawyer Erika Kelton, who writes about the subject for *Forbes*, says Korb’s comments “reflect a mindset at the IRS that for some has gone unchanged despite the substantial and time-tested success of whistleblower programs.”⁵⁴

Others say the penalties private companies face for retaliating against whistleblowing employees aren’t stringent enough.

Tom Carpenter, executive director of Hanford Challenge, a nonprofit group monitoring Washington state’s Hanford nuclear weapons site, says the model of the Nuclear Regulatory Commission (NRC) should be imitated when public health and safety are involved.

The NRC’s regulations empower the agency to criminally prosecute electric utilities for discriminating against whistleblowers. The agency also can impose civil penalties and revoke the utilities’ license to operate a nuclear plant.⁵⁵

“That’s the kind of message that needs to be sent to protect whistleblowers if we’re really serious about protecting them,” says Carpenter, a member of the Hanford Concerns Council, a whistleblower mediation group. (See sidebar, p. 108.) “What I see is that whistleblower protection laws don’t work. They’re too weak and insufficient to provide any protection.” ■

BACKGROUND

‘Lincoln Law’

For a century-and-a-half, whistleblowers have owed a debt to Abraham Lincoln.

Continued on p. 108

Chronology

1960s-1970s *Whistleblowers reveal government misdeeds during Vietnam War and Watergate scandal.*

1968

Pentagon fires A. Ernest Fitzgerald for revealing cost overruns in developing the C-5A military transport plane. He is reinstated in 1982.

1971

Consumer advocate Ralph Nader calls for whistleblower protection.

1973

FBI Associate Director W. Mark Felt (dubbed “Deep Throat”) secretly provides key information about Watergate scandal to *Washington Post*. . . . Charges dropped against former Pentagon analyst Daniel Ellsberg for leaking Pentagon Papers, a top-secret history of the Vietnam War, to *The New York Times*.

1978

Congress passes first whistleblower law, the Civil Service Reform Act.

1980s *Congress strengthens whistleblower laws.*

1986

Congress overhauls 1863 False Claims Act, increasing whistleblowers’ shares of reward money.

1987

Congress passes Whistleblower Protection Act (WPA), but Republican President Ronald Reagan vetoes it the next year, contending it would merely aid the disgruntled.

1989

President George H. W. Bush signs a toned-down version of the WPA.

1990s *New generation of whistleblowers reveals sensational corporate and government wrongdoing.*

1992

Congress halts mental health exams for military whistleblowers and restores cash awards to whistleblowers who save the government money.

1994

Congress strengthens WPA, allowing whistleblowers to challenge agency decisions to alter their working conditions or order them to undergo psychiatric testing.

1995

Former tobacco-industry scientist Jeffrey Wigand reveals a decades-long cover-up of smoking hazards by Brown & Williamson Tobacco Corp.

1997

Internal Revenue Service auditor Jennifer Long tells Congress the IRS targets lower-income taxpayers for audits because they are seen as easy targets. . . . A federal judge in Houston rules the False Claims Act unconstitutional; Supreme Court later overturns the decision.

2000s *National security whistleblowers face retaliation.*

2002

FBI agent Colleen Rowley reveals FBI’s pre-9/11 incompetence. . . . Congress passes Sarbanes-Oxley Act, containing numerous provisions to protect corporate whistleblowers.

2004

Army Sgt. Samuel A. Provance is reduced in rank after revealing abuses at Abu Ghraib prison in Iraq.

2005

Army Corps of Engineers demotes contract specialist Bunnatine H. Greenhouse after she complains of irregularities in Iraq War contracts; she later wins a settlement of nearly \$1 million. . . . U.S. Supreme Court refuses to hear appeal of dismissal of FBI whistleblower Sibel Edmonds, who accused colleagues of covering up illicit activity.

2006

WikiLeaks becomes a prominent online publisher of classified information. . . . Supreme Court rules in *Garcetti v. Ceballos* that public employees have no First Amendment protection for speech communicated on the job.

2010

Army intelligence analyst Pfc. Bradley Manning is arrested after leaking hundreds of thousands of documents to WikiLeaks.

2012

Congress passes and President Obama signs into law the Whistleblower Protection Enhancement Act affording government whistleblowers greater protections.

2013

National Security Agency contractor Edward Snowden ignites huge national security controversy by leaking details of NSA’s surveillance programs. . . . U.S. District Judge Richard Leon rules that the NSA’s telephone data-collection program is unconstitutional, but U.S. District Judge William Pauley rules that it is legal under the USA Patriot Act.

2014

Responding to calls from *The New York Times* and other newspapers to offer clemency to Snowden, President Obama says he does not “have a yes/no answer.”

Unique Group Defuses Nuclear Whistleblower Cases

Panel at Hanford facility is model for avoiding legal battles.

When the huge Hanford nuclear materials production facility in Washington state faced a rash of whistleblower lawsuits and allegations of worker retaliation in the early 1990s, officials at the site set up a special mediation group.

The unit has been so successful that its members now see it as a potential model to others who want to address whistleblowers' concerns without fighting in court.

The Hanford Concerns Council has resolved all of the roughly 140 cases it has accepted, says Jonathan Brock, the group's chairman. That figure represents about half the total number of cases it has received; council members reject cases in which they either lack jurisdiction or that they feel can be addressed more effectively in other ways.

Brock recently published an academic article explaining why other entities should consider copying the council.

"In most instances, the Hanford Council system not only addresses retaliation against employees who have blown the whistle, but also addresses underlying safety systems issues, policies, management practices and often, relationship and cultural issues contributing to the misunderstandings and behaviors in the workplace that spawned the original problem or dispute," Brock, a retired University of Washington public affairs professor, wrote.¹ To deal with retaliation while a case is being heard, the council often recommends reassigning workers as well as postponing job evaluations or threatened firings.

That approach is broader in scope than most mediation efforts, which typically focus on providing a financial reward to the whistleblower. "In our system, the whistleblower can get [the underlying problem] addressed or fixed," Brock says.

Tom Carpenter, a founding member of the council, agreed that it should be duplicated elsewhere. Carpenter is executive director of Hanford Challenge, a nonprofit group monitoring environmental, health and safety issues at Hanford.

Hanford was set up in 1943 as part of the Manhattan Project to process plutonium for the first atomic bomb. The 586-square-mile complex was mostly decommissioned at the end of the Cold War and is now the country's largest environmental cleanup site.²

The council "is a unique thing, and it has elements that could be really useful for both protecting dissent and improving workplace and public health and safety," Carpenter says. "It's good for companies, too, because they get their problems pointed out early and get insulated from lawsuits and bad publicity."

The local *Tri-City Herald* praised the council in a 2010 editorial: "If even one lawsuit was avoided . . . then the council has proved its worth."³

Once the council issues its findings, the president of the company responsible for the original complaint must act on it unless he can prove the findings are illegal or would violate the firm's contract. "If we didn't have that, there wouldn't be a council," Carpenter says. "The president would say, 'Thank you very much, I'm not going to waste my time with this.'"

The council played a key role in resolving a long-standing dispute over Hanford workers' exposure to toxic chemical vapors, which had sparked many whistleblower complaints. To evaluate the level of the exposures, it hired an independent expert panel, which issued a report in 2008.⁴

Over the longer term, Carpenter says, the group has fostered cooperation among people who normally would be adversaries.

"Some of these managers [on the council] who I wouldn't have given the time of day, I now consider my friends. We've developed bonds of trust," he says. That's a very unusual thing to have happen. In the past it was, 'They hate me; I hate them.' "

— *Chuck McCutcheon*

¹ Jonathan Brock, "Filling in the Holes in Whistleblower Protection Systems: Lessons from the Hanford Council Experience," *Seattle Journal for Social Justice* 11:2, Dec. 1, 2013, digitalcommons.law.seattleu.edu/sjsj/vol11/iss2/6.

² "Nuclear Safety Division," Oregon.gov, www.oregon.gov/ENERGY/NUCSAF/Pages/nucsaf.aspx.

³ "Hanford Concerns Council Needs More Participants," *Tri-City Herald*, March 24, 2010.

⁴ "Hanford Council Releases Expert Panel Review of Toxic Chemical Vapor Report," news release, Hanford Challenge, Sept. 29, 2008, www.hanfordchallenge.org/cmsAdmin/uploads/2008_09_29_Independent_Review_Vapor.pdf.

Continued from p. 106

During the Civil War, shady military contractors sold the Union Army gunpowder that had been cut with sawdust, as well as other unusable supplies. But the government lacked the resources to detect the fraud, and even if the wrongdoing was spotted it was often impossible to find the culprit or obtain damages.⁵⁶

At Lincoln's request, Congress in

1863 enacted the False Claims Act, known as the "Lincoln Law." It authorized civil servants and citizens to sue those cheating the government and share any money the government recovered. The law contained *qui tam* provisions, short for the Latin phrase "*qui tam pro domino rege quam pro se ipso in hac parte sequitur*," which translates as "he who brings an action for the king as well as for himself."⁵⁷

Although the False Claims Act was a landmark law, it focused only on private contractors' abuses, not government wrongdoing. Two subsequent presidents, Theodore Roosevelt and William Howard Taft, issued executive orders threatening to fire any federal workers who sought to contact Congress on their own to report wrongdoing. Congress responded in 1912 by passing the Lloyd-LaFollette Act, which barred the firing of employees who

approached the legislative branch.⁵⁸

The term “whistleblower,” which had described British police — “bobbies” — who blew whistles when they saw crimes in progress, became part of the American lexicon in the early 20th century. *Wall Street Journal* language columnist Ben Zimmer wrote that by the 1930s the term evolved into a sinister synonym for a squealer, citing New York sports-writer Jack Miley’s condemnation of wrestling promoter Jacob Pfefer for exposing the sport’s fakery: “Jake is a whistle-blower, which is unforgivable.”⁵⁹

In the 1960s, consumer activist Ralph Nader gained widespread attention with his investigations into corporate malfeasance. “The willingness and ability of insiders to blow the whistle is the last line of defense ordinary citizens have against the denial of their rights and the destruction of their interests by secretive and powerful institutions,” Nader wrote.⁶⁰

Vietnam and Watergate

The late 1960s and early ’70s were an active period for whistleblowing, as disillusionment with the Vietnam War fueled the public’s skepticism of government and the military in particular.

Pentagon auditor A. Ernest Fitzgerald in 1968 reported a \$2.3 billion cost overrun in the Lockheed C-5 aircraft program and testified before the Joint Economic Committee. Fitzgerald was fired, reportedly on the orders of President Richard M. Nixon, but was later reinstated. The following year, ex-Army helicopter gunner Ron Ridenhour wrote a letter to Congress and the Pentagon describing the horrific 1968 events at My Lai in Vietnam, including the torture, sexual abuse, mutilation and mass murder of hundreds of unarmed civilians.⁶¹

But neither Fitzgerald nor Ridenhour achieved the stature of Ellsberg, the defense analyst who in 1971 leaked the Pentagon Papers. Although Ellsberg was arrested weeks after *The New York Times* published the ac-

count, the charge that he had violated the Espionage Act was dropped after government agents were found to have illegally tapped his phone.⁶²

The political operatives who had monitored Ellsberg’s calls and broke into his psychiatrist’s office in search of damaging information later became infamous when they were caught breaking into the Democratic National Committee’s offices at the Watergate Hotel in Washington. Another famous whistleblower from the Nixon era was FBI Associate Director W. Mark Felt, who anonymously provided key information about the Watergate scandal to *The Washington Post* under the pseudonym “Deep Throat” and managed to keep his identity a secret until three years before his death in 2008.⁶³

Other prominent whistleblowers during the 1970s included New York police officer Frank Serpico, who exposed corruption within the department, and Karen Silkwood, a technician at Oklahoma’s Kerr-McGee plutonium fuel production plant, who was gathering evidence about the plant’s negligence in maintaining safety when she was killed in a mysterious car accident.⁶⁴

Such incidents helped to create a pro-whistleblower public mood. Congress responded in 1978 by passing the Civil Service Reform Act, which created the Merit Systems Protection Board and Office of Special Counsel. But during the administration of Republican President Ronald Reagan, federal workers remained afraid of reprisals. The percentage of employees who said in anonymous surveys that they kept quiet about official misconduct doubled between 1980 and 1983.⁶⁵

In 1986 Congress overhauled the 123-year-old False Claims Act. The revised law increased the size of whistleblowers’ reward monies, eased certain restrictions for filing an action and provided a separate legal cause of action for those who contended they had been discriminated against as a result of their whistleblowing activities.⁶⁶

In recent years, the government has recovered more than \$2 billion a year from whistleblower-initiated suits under the False Claims Act, much of that due to health-care fraud cases, in which the numbers have risen as health costs have climbed. More than \$18 billion of the \$27 billion recovered under the act between 1986 and 2010 came from health-care related cases, according to a 2011 study.⁶⁷

The popularity of the False Claims Act has spread to states and even some cities. More than half of states have enacted their own versions, as have cities such as New York, Chicago and the District of Columbia.⁶⁸

Meanwhile, would-be federal employee whistleblowers often lack monetary incentives to step forward and fear losing their jobs and security clearances. Lawmakers have tried to deal with their reluctance: In 1987 Congress passed the Whistleblower Protection Act (WPA), which aimed to authorize the Office of Special Counsel to appeal Merit Systems Protection Board decisions in federal court and make it easier for workers to claim they were victims of retaliation. But Reagan vetoed the measure, contending it would let undeserving employees avoid being punished. Congress responded the following year by passing a stripped-down version that removed the OSC’s appeal power; President George H. W. Bush signed it into law.⁶⁹

Although the Whistleblower Protection Act has been employed frequently since then, experts question its effectiveness. A 2013 study showed that federal agencies won nearly four-fifths of the 151 WPA cases appealed to federal court. And in 142 cases involving government ethics and administration issues, employees again lost nearly four-fifths of the time, and lost three-quarters of the cases involving national security.

“The results lead to the conclusion that either the WPA as written or the manner in which courts are interpreting the WPA is not consistent with the intent of the legislation — to protect employees,” said the study, which appeared

in the journal *Review of Public Personnel Administration*.⁷⁰

Congress amended the law in 1994 in an effort to close loopholes. The changes allowed whistleblowers to challenge agency moves seen as retaliatory, such as changing their working conditions or ordering them to undergo psychological testing.⁷¹

Famous Whistleblowers

But perceived weaknesses in whistleblower laws did not prevent a wave of corporate and government insiders from stepping forward in numerous high-profile cases during the 1990s.

They included Jeffrey Wigand, the highest-ranking executive to turn against the tobacco industry. Wigand, the former vice president for research and development for the Brown & Williamson tobacco company, disclosed that the company misled consumers about how addictive and hazardous cigarettes are and conspired to hide and quash research about the health effects of smoking.

Another was Mark Whitacre, an executive at the Archer Daniels Midland conglomerate who became an FBI informant in an investigation of price fixing at the company. At the same time, Whitacre was embezzling from the company and eventually was caught and served an eight-and-a-half-year prison term.⁷²

Like Serpico and Silkwood, the stories of Wigand and Whitacre became the subjects of major Hollywood films (“The Insider” starring Russell Crowe and “The Informant!” starring Matt Damon, respectively), giving the cases even more public attention.

In the early 2000s the Enron and WorldCom scandals sparked deep public outrage toward corporate behavior. Watkins, Enron’s vice president of corporate development, warned CEO Kenneth Lay in 2001 that the firm faced financial collapse.⁷³ Meanwhile, WorldCom auditor Cooper’s accounts in 2002 of phony accounting practices

helped drive the telecommunications giant into bankruptcy.⁷⁴

Congress’ response to the scandals was Sarbanes-Oxley, the most sweeping investor-protection measure adopted since the Great Depression. The law included several measures that dealt with private-sector whistleblowing, including an anti-retaliation provision.

Whistleblower advocates hailed Sarbanes-Oxley as a watershed measure, and some of its anti-retaliatory language has appeared in subsequent statutes.⁷⁵

In addition, Sarbanes-Oxley has spurred the corporate world to act on its own: A 2010 study by financial giant KPMG found that 87 percent of U.S. companies have whistleblower mechanisms in place, such as a hotline or an ombudsman, up from 75 percent in 2008.⁷⁶

In a 2012 analysis of Sarbanes-Oxley, however, the University of Nebraska’s Moberly said the measure “often failed to protect [employees] from reprisals and failed to compensate them consistently for the retaliation they suffered.” He noted that despite the added legal protections available to financial industry employees, whistleblowers did not play a significant role in exposing the financial crisis of 2007-2008.

“These related failures indicate that although whistleblowers had stronger and more prevalent protection than ever before, they had less reason to believe such protection works,” he concluded.⁷⁷

For all of the emphasis given to private-sector exposures of wrongdoing, national-security leaks have drawn substantially more attention in the years since the Sept. 11, 2001, terrorist attacks.

The FBI’s Rowley documented the failures of bureau officials in Washington to act on information provided by the Minneapolis field office regarding suspected terrorist Zacarias Moussaoui. Both the 9/11 commission that investigated the attacks and the Justice Department’s inspector general called that failure a significant missed opportunity.⁷⁸

WikiLeaks, launched in 2006, became a forum for several damaging corporate

and government-related disclosures even before it published secret documents stolen by Manning.⁷⁹ At the same time, the wars in Iraq and Afghanistan prompted allegations of financial misdeeds.

For instance, Army Corps of Engineers contracts supervisor Bunnatine H. Greenhouse raised questions about contracting irregularities in a series of billion-dollar contracts awarded to a subsidiary of energy giant Halliburton Co. She was demoted for allegedly poor job performance in 2005 and contested the action. In a 2011 settlement, the Corps agreed to pay her nearly \$1 million.⁸⁰

But the U.S. Supreme Court dealt whistleblowers what advocates called a massive setback in 2006. In *Garcetti v. Ceballos*, the court ruled that public employees had no First Amendment protection for speech communicated as part of their job duties.⁸¹

The decision fueled Congress’ efforts in 2012 to pass the bipartisan Whistleblower Protection Enhancement Act, which whistleblower advocates hailed for overriding *Garcetti*.⁸² ■

CURRENT SITUATION

Congressional Action

Congress, the Obama administration, state governments and federal courts are working to put more teeth into existing whistleblower protection laws or expanding existing protections into new areas.

For example, the fiscal 2014 Defense Department authorization bill aims to overhaul the 1988 Military Whistleblower Protection Act governing the reporting of abuses in the armed services.

Lawmakers say service members have had difficulty in exposing wrongdoing compared to their civilian counterparts, in part because of the military’s culture. “Too often, these complaints get

Whistleblower Cases from Doping to Medicare Fraud

Cases involve private and government employees.

Several recent high-profile cases have involved both private- and public-sector employees and have revealed — among other things — wrongdoing in professional sports and investor fraud. For example:

- Disgraced cyclist Lance Armstrong is the target of a whistleblower lawsuit in which his former teammate Floyd Landis — joined by the Justice Department — is suing Armstrong under the False Claims Act, which allows U.S. citizens to sue any entity for defrauding the government. Landis, who is seeking up to \$120 million, claims Armstrong's illegal doping defrauded the U.S. Postal Service, which sponsored their racing team.¹

- Whistleblowers at the Secret Service told Senate investigators in 2013 that agents and managers had engaged in sexual misconduct and other improprieties, revelations that came to light after several Secret Service agents the year before were accused of hiring prostitutes in Colombia.²

- The testimony of seven Department of Homeland Security (DHS) whistleblowers served as the basis of an October 2013 report that disclosed widespread misuse of overtime pay in six DHS offices.³

- The Justice Department in November awarded more than \$167 million to an unspecified number of whistleblowers in three states as part of a settlement with Johnson & Johnson over allegations the pharmaceutical giant marketed drugs for unapproved

uses and gave kickbacks to doctors and nursing homes.⁴

- The SEC in October awarded \$14 million to an unidentified whistleblower for helping the agency with an investigation that helped recover “substantial” investor funds. The agency previously had never paid more than \$125,000 in an individual case.⁵

- The Justice Department said in January it had joined eight separate whistleblower lawsuits in six states against Health Management Associates, a Florida-based, for-profit hospital chain accused of scheming to increase hospital admissions so that it could inflate payments from Medicare and Medicaid.⁶

— *Chuck McCutcheon*

¹ Liz Clarke, “Lance Armstrong Whistleblower Suit Motion for Dismissal Goes to Judge,” *The Washington Post*, Nov. 18, 2013.

² Carol D. Leonnig and David Nakamura, “Whistleblowers Tell Senate Panel of Alleged Sexual Misconduct by Secret Service Agents,” *The Washington Post*, Nov. 14, 2013.

³ Emily Wax-Thibodeau, “Homeland Security Workers Routinely Boost Pay With Unearned Overtime, Report Says,” *The Washington Post*, Oct. 31, 2013.

⁴ Gregory Wallace, “\$168 Million Payout to Johnson & Johnson Whistleblowers,” CNN.com, Nov. 4, 2013.

⁵ Gregory Wallace, “Whistleblower Awarded \$14 Million, SEC's Largest Ever,” CNN.com, Oct. 1, 2013.

⁶ Julie Creswell and Reed Abelson, “Hospital Chain Said to Scheme to Inflate Bills,” *The New York Times*, Jan. 23, 2014.

tossed into the garbage for no good reason,” said Sen. Grassley, who was one of the lawmakers who worked to insert the provisions into the defense law. “Retaliation seems to be the norm rather than the exception.”⁸³

The new provisions expand the statute of limitations for military whistleblower claims, expand protections against sexual harassment and give service members the right to an administrative hearing if they are unsatisfied by an office of inspector general action.⁸⁴

The Senate in November passed a bipartisan bill sponsored by Grassley and Senate Judiciary Committee Chairman Patrick Leahy, D-Vt., aimed at preventing retaliation against employees who report criminal price-fixing to the Justice Department. The legislation stemmed from a 2011 Government Accountability Office report that said whistleblowers in such situations had no legal recourse

after reporting wrongdoing to the department. It allows employees who say they are retaliation victims to file complaints with the secretary of Labor and provides for those employees to be reinstated to their former status if the secretary finds in their favor.⁸⁵

Another bipartisan bill, introduced in December by Sen. Jon Tester, D-Mont., and cosponsored by Grassley and Sen. Claire McCaskill, D-Mo., would clarify the right of employees designated as “national-security sensitive” — a prerequisite to getting a security clearance — to seek reviews before the Merit Systems Protection Board.⁸⁶

The bill addresses an issue raised in an August ruling by the U.S. Court of Appeals for the Federal Circuit involving two Pentagon employees found ineligible to hold national-security sensitive jobs. The court ruled in *Kaplan v. Conyers* that even low-level work-

ers without access to classified material could pose a security threat and thus could not appear before the board.

The Office of Special Counsel's Lerner warned that the decision is “a significant threat to whistleblower protection for hundreds of thousands of federal employees in sensitive positions and may chill civil servants from blowing the whistle.”⁸⁷

Because of the added protections to federal workers provided in the Whistleblower Protection Enhancement Act, Lerner said in December 2013 that her agency's caseload “has really gone through the roof.”⁸⁸ Her request for an additional \$1.7 million for the OSC became part of a fiscal 2014 catchall spending bill that Obama signed into law in January, enabling Lerner to hire an additional 11 employees.⁸⁹

In response to the Snowden controversy, the Senate Intelligence Committee

in November approved a fiscal 2014 intelligence authorization bill that would extend whistleblower protections to employees of spy agencies — but its provisions wouldn't apply to contractors such as Snowden. It also would require internal agency hearings to hear whistleblower claims instead of an outside entity or a judge.

In general, the Republican-controlled House has been less inclined than the Democratic-controlled Senate to act on whistleblower legislation. Rep. Darrell Issa, R-Calif., who chairs the Oversight and Government Reform Committee, has held hearings on some matters involving the Obama administration, including one in August 2013 on whether the Energy Department's Bonneville Power Administration, a federal agency based in Portland, Ore., retaliated against whistleblowers.⁹⁰

"I want to send a message to any whistleblower out there: If you want to come forward and speak, we will protect you," Issa said at the hearing.⁹¹

Issa also has been among the conservatives who have sought to portray Gregory Hicks, the deputy chief of mission at the U.S. consulate in Benghazi, Libya, when it was attacked in 2012, as a whistleblower. Conservative media outlets contend Hicks was silenced and demoted by his State Department superiors for questioning the Obama administration's response to the attack. Democrats have challenged that characterization, contending that Hicks cooperated with FBI and State Department investigators and was never demoted but is awaiting a new job posting at which he would hold the same rank and salary.⁹²

In December, Rep. Matt Salmon, R-Ariz., introduced a bill backed by other conservatives creating whistleblower protections for labor union employees. "They should be able to shine a light on corruption or violations of their unions' fiduciary duties, without the threat of union boss retaliation," Salmon said.⁹³

Even if the House passes the bill in 2014, it faces extremely long odds

in the Democratic-controlled Senate. Democrats traditionally are union supporters and are highly unlikely to take up legislation that would interfere with the authority of union leaders.

Aside from what Congress is doing, the Obama administration has taken several recent steps aimed at encouraging more whistleblowing. The Occupational Safety and Health Administration (OSHA) developed a new procedure last year for handling retaliation complaints. It allows individuals to complete an online form 24 hours a day instead of only accepting complaints in writing or orally during business hours.⁹⁴

At the Pentagon, Patrick Gookin was installed last March as the first director of the Defense Hotline Program and whistleblower protection ombudsman. Since then, he has waged a public-awareness campaign to let all employees know they can turn to his office with complaints through the anonymous Defense Department hotline.

"We don't care who you are; we don't care what your motivation is," Gookin told reporters in November. "You could be calling for all the wrong reasons — you're a jilted lover — but as long as what you're calling about is true, that's all we care about."⁹⁵

State and Court Actions

Some state governments are broadening or seeking to broaden their existing whistleblower laws.

In New York, for instance, a proposed bill would expand the state's False Claims Act to include financial industry whistleblower provisions similar to those in the federal Dodd-Frank law. The bill would entitle eligible whistleblowers to receive between 10 percent and 30 percent of the damages recovered by the state.⁹⁶

Minnesota recently expanded its 27-year-old whistleblower law, which previously applied only to state employees, to cover private-sector workers.⁹⁷

California also expanded the state's whistleblower law. Previously, the law had prohibited employers from retaliating against employees who reported violations of state or federal laws, rules, or regulations to a government or law enforcement agency. The new law extends that protection to employees who report suspected illegal behavior either internally or externally and declares as unlawful any policies that prevent the disclosure of potential violations of local laws, rules or regulations.⁹⁸

In Pennsylvania, the most populous state without its own version of the False Claims Act, two legislators recently introduced such a bill. The prime sponsor, Democratic state Rep. Brandon Neuman, said the lack of a false claims law is costing the state millions of dollars in damages it could otherwise recover.⁹⁹

The U.S. Supreme Court in November heard arguments in a case that addresses whether workers at private companies contracting with public companies offering stock shares can be legally considered whistleblowers.

The case, *Lawson v. FMR LLC*, involves two Fidelity Investments employees who complained to the Labor Department that they were dismissed after raising questions about the accuracy of corporate filings. Fidelity, which is privately held but sells shares of public companies to investors, argued that Congress intended the Sarbanes-Oxley Act's protections against retaliation to apply only to employees of public companies.

Employment lawyer R. Scott Oswald, whose firm filed an amicus brief in the case, says justices appeared sympathetic to upholding employees' rights in the 1989 and 2012 whistleblower protection laws.¹⁰⁰ But Justice Anthony Kennedy, who is often a swing vote on the court, seemed unconvinced by the arguments of the Justice Department, which backs the two workers.¹⁰¹

The Supreme Court also is considering hearing two appeals from the

Continued on p. 114

At Issue:

Can Edward Snowden be considered a whistleblower?



BEATRICE EDWARDS
*EXECUTIVE DIRECTOR, GOVERNMENT
ACCOUNTABILITY PROJECT; LEGAL COUNSEL
TO EDWARD SNOWDEN*

WRITTEN FOR *CQ RESEARCHER*, JANUARY 2014

Last year, federal contractor Edward Snowden made substantial revelations to journalists about National Security Agency (NSA) surveillance programs that he reasonably believed to be illegal and an abuse of NSA authorities. Snowden's actions alone make him a whistleblower, but consider the actions that followed.

Roughly six months later, U.S. District Court Judge Richard Leon characterized the NSA's telephone-call metadata collection program revealed by Snowden as ineffective and likely unconstitutional. Days later, a hand-picked White House panel of intelligence and legal experts came to the same conclusion. Among their 46 recommendations to rein in the national surveillance apparatus was termination of the bulk metadata collection program.

The White House responded on Jan. 17 with the president's first major policy speech on the nation's intelligence programs, in which he suggested "concrete and substantial" reforms to NSA surveillance programs.

Finally, less than a week later, the Privacy and Civil Liberties Oversight Board, an independent bipartisan agency that had been essentially dormant until three months after the Snowden revelations, issued a 238-page report concluding that the NSA metadata collection program is illegal and should be closed down.

The oversight board also pointed out that the Foreign Intelligence Surveillance Act (FISA) Court failed to produce a judicial opinion on the legal rationale for the metadata program until two months after the Snowden disclosures. Thus, the court had been issuing orders for phone company records as early as May of 2006 with no written judicial opinion.

The oversight board also questioned the utility of the metadata program, stating it found "no instance in which the program directly contributed to the discovery of a previously unknown terrorist plot or the disruption of a terrorist attack." In other words, Snowden revealed a secret program that was completely ineffective and authorized by a secret court that had failed to provide a written legal rationale.

Snowden's revelations have given rise to more than two dozen bills in Congress, several lawsuits and governmental and corporate reforms worldwide. His actions also exposed false statements given under oath to Congress from Director of National Intelligence James Clapper.

U.S. law defines whistleblowers as employees of conscience who disclose actions they believe are illegal, fraudulent, wasteful, abusive of authority or dangerous to the public. It's abundantly clear from these events that Snowden acted in the public interest as a classic whistleblower.



JON MILLS
*DEAN EMERITUS, PROFESSOR OF LAW;
DIRECTOR, CENTER FOR GOVERNMENTAL
RESPONSIBILITY, UNIVERSITY OF FLORIDA
LEVIN COLLEGE OF LAW*

WRITTEN FOR *CQ RESEARCHER*, JANUARY 2014

Let's be clear — it is rational and acceptable to criticize the NSA for violating privacy rights and at the same time believe that Edward Snowden is not a hero.

Snowden is not willing to go to jail for his principles, nor is he willing to follow the law to be a real whistleblower. He is not Martin Luther King, Jr. He is not Daniel Ellsberg. Real whistleblowers seek to point out wrongdoing to make the country better. Some become media heroes. In 2002, FBI agent Colleen Rowley was one of *Time's* "Persons of the Year" for revealing FBI incompetence before the Sept. 11, 2001, terrorist attacks.

There are 40 or more statutes that protect whistleblowers today. They include protection for national security disclosures. A real whistleblower, even one dealing with national security issues, could have sought the truth under existing whistleblowing laws. These laws allow for disclosures to be made to congressional intelligence committees, which allows for the privacy debate while also protecting national security.

There is an ethical component to whistleblowing. That is, we have laws to protect whistleblowers because we think a person who honors the moral obligation to disclose wrongdoing should be afforded legal protection from retribution. It is not clear that Snowden was following such a moral compass.

Instead, Snowden violated his confidentiality oath, fled to Hong Kong and Russia and disclosed multiple national secrets. But he sparked a needed national debate.

What have we learned?

- We need more transparency in national intelligence policy. We do need to know how our government is interpreting surveillance laws. Some of the testimony of the intelligence hierarchy reminds us of Jack Nicholson's Colonel Jessup in "A Few Good Men" — "You can't handle the truth!" Yes we can. We do not need to know how, when or where the NSA is wire-tapping terrorists. We do need to know what type of data the NSA is collecting on all Americans.

- We need a better process for real whistleblowers. There are good proposals for creating a truly independent inspector general position reporting directly to Congress that can protect whistleblowers and national security.

- We can't outsource national security to people like Snowden. We need better scrutiny of contractors and a tighter definition of what should be "outsourced."

Our country is having a healthy privacy debate since Snowden's disclosures. That fact does not make him a hero or a whistleblower.

Continued from p. 112

Fourth U.S. Circuit Court of Appeals involving False Claims Act cases. The court has asked the Office of Solicitor General for its views, greatly increasing the chance that the court will take up at least one of the cases.¹⁰²

In another closely watched case, the U.S. Court of Appeals for the Federal Circuit recently rejected a petition from the departments of Justice and Homeland Security for a full-court review of an April three-judge panel decision involving a Transportation Security Administration employee. Whistleblower advocates hailed the court's decision involving Robert MacLean, who revealed in 2003 that the Department of Homeland Security had decided to cancel a plan to put federal air marshals on long-distance flights.¹⁰³ ■

OUTLOOK

Contagious Courage?

The acclaim that Snowden has drawn from civil libertarians and the media — *The New York Times'* editorial board called for him to receive clemency or a plea bargain — gives whistleblower advocates hope that the case will inspire more employees to come forward.¹⁰⁴

Since the NSA revelations became public, “a handful” of intelligence workers already have approached the Government Accountability Project seeking help with their claims of wrongdoing, says Jesselyn Radack, the group's national security and human rights director. “I think courage is contagious,” says Radack, a former Justice Department ethics adviser who revealed FBI ethics violations involving the interrogation of “American Taliban” fighter John Walker Lindh. Soon afterwards, she received a negative performance review and resigned from the department.¹⁰⁵

Whistleblower lawyer Kohn says Snowden and Manning don't fit the profile of most whistleblowers, who tend to be older and occupy senior positions within their organizations. “They've been around for 10 or 15 years and they have a lot to lose,” he says. “I never get clients in their 20s, ever.”

Continuing technological advances likely will encourage more whistleblowing. The nonprofit Freedom of the Press Foundation announced in December that the next version of Secure Drop, an online document repository for anonymous whistleblowers to submit information to news organizations, had been finalized.¹⁰⁶ American University's Vaughn predicts that such developments will enhance what is already strong public support — and, in turn, political support — for exposing future workplace problems.

“Whistleblowing has reached a level of public acceptance that portends the future development of whistleblower laws and the need for institutions both public and private to come to grips with whistleblowing,” says Vaughn.

In such a climate, he and other experts predict, companies and organizations are likely to take more proactive actions to address whistleblowing internally. Washington employment lawyer Terence Healy proclaimed 2014 “the year of the whistleblower” and urged companies to act accordingly.

“Employers who do not take steps to address any employee concerns before they reach ‘whistleblower’ status — like strengthening internal reporting and compliance programs — do so at their peril,” Healy wrote in *Forbes*.¹⁰⁷

Griffith University's Brown says that, ideally, governments and businesses will come to regard whistleblowing as positive, so that the need for antiretaliation laws will diminish over time.

“The big shift yet to occur in the U.S. is one that recognizes the value of whistleblowing for good governance and good regulation,” says Brown. If that happens, legislation and policies

eventually will change organizational culture and practice and “reduce the level of reprisal in the first place,” he says. ■

Notes

¹ Remarks by Thomas Drake at “National Whistleblower Tour,” American University, Sept. 23, 2013; for background, see Jane Mayer, “The Secret Sharer,” *The New Yorker*, May 23, 2011, www.newyorker.com/reporting/2011/05/23/110523fa_fact_mayer.

² Catherine Foti, “The SEC's 2013 Whistleblower Report: Things Left Unsaid,” *Forbes*, Nov. 20, 2013, www.forbes.com/sites/insider/2013/11/20/the-secs-2013-whistleblower-report-things-left-unsaid/.

³ Charles S. Clark, “Operators Are Standing By at Pentagon Whistleblower Hotline,” *Government Executive*, Nov. 15, 2013, www.govexec.com/management/2013/11/operators-are-standing-pentagon-whistleblower-hotline/73940/.

⁴ Correy E. Stephenson, “An Explosion of Whistleblower Claims,” *Michigan Lawyers Weekly*, July 1, 2013, <http://milawyersweekly.com/news/2013/07/01/an-explosion-of-whistleblower-claims/>.

⁵ “Fraud Statistics — Overview, October 1, 1987-Sept. 30, 2013, Civil Division, U.S. Department of Justice, www.justice.gov/civil/docs_forms/C-FRAUDS_FCA_Statistics.pdf.

⁶ Gregory Wallace, “Whistleblower Awarded \$14 Million, SEC's Largest Ever,” CNN.com, Oct. 1, 2013, <http://money.cnn.com/2013/10/01/news/sec-whistleblower/>.

⁷ For background on Snowden, see Chuck McCutcheon, “Government Surveillance,” *CQ Researcher*, Aug. 30, 2013, pp. 717-740.

⁸ “What Is a Whistleblower?” Government Accountability Project website, www.whistleblower.org/about/what-is-a-whistleblower.

⁹ Siddhartha Dasgupta and Ankit Kesharwani, “Whistleblowing: A Survey of Literature,” *IUP Journal of Corporate Governance*, October 2010, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1737567.

¹⁰ Marc D. Street, “Cognitive Moral Development and Organizational Commitment: Two Potential Predictors of Whistleblowing,” *Journal of Applied Business Research*, Vol. 11, No. 4 (1995), cluteonline.com/journals/index.php/JABR/article/download/5853/5931.

¹¹ Charles Bankhead, “Whistleblowers Endure Stress and Personal Hardship,” *MedPage Today's KevinMD.com*, June 7, 2010, www.kevinmd.com.

com/blog/2010/06/whistleblowers-endure-stress-personal-hardship.html.

¹² Natasha Lennard, "NSA's Dragnet Is Indefensible," *Salon.com*, June 7, 2013, www.salon.com/2013/06/07/dont_defend_the_dragnet/.

¹³ Phil Mattingly and Hans Nichols, "Obama Pursuing Leakers Sends Warning to Whistleblowers," *Bloomberg.com*, Oct. 17, 2012, www.bloomberg.com/news/2012-10-18/obama-pursuing-leakers-sends-warning-to-whistle-blowers.html. Also see "PunditFact," *Tampa Bay Times*, Jan. 10, 2014, www.politifact.com/punditfact/statements/2014/jan/10/jake-tapper/cnns-tapper-obama-has-used-espionage-act-more-all-/.

¹⁴ Daniel Ellsberg, "Edward Snowden: Saving Us From the United Stasi of America," *The Guardian*, June 10, 2013, www.theguardian.com/commentisfree/2013/jun/10/edward-snowden-united-stasi-america.

¹⁵ Russell Goldman, "Hero. Traitor. Whistleblower. Spy. What to Call NSA Leaker Ed Snowden?" ABC News.com, June 11, 2013, <http://abcnews.go.com/US/nsa-leaker-edward-snowden-whistle-blower/story?id=19374578>.

¹⁶ "Supreme Court Bars Appeal of Ex-CIA Agent," *The Associated Press*, Jan. 9, 2006, www.nbcnews.com/id/10776953/ns/us_news-life/#.UsHHUvZOBV4.

¹⁷ Leonard Downie Jr. with Sara Rafsky, "The Obama Administration and the Press," Committee to Protect Journalists, Oct. 10, 2013, www.cpj.org/reports/2013/10/obama-and-the-press-us-leaks-surveillance-post-911.php.

¹⁸ "Bradley Manning's Lawyer: He's a Whistleblower," *The Associated Press*, July 26, 2013, www.cbsnews.com/news/bradley-mannings-lawyer-hes-a-whistleblower/.

¹⁹ Chase Madar, "Bradley Manning: Criminal or Whistleblower?" *Mother Jones.com*, Jan. 19, 2012, www.motherjones.com/politics/2012/01/bradley-manning-criminal-whistleblower-wiki-leaks.

²⁰ Trevor Timm, "If Snowden Returned to U.S. For Trial, All Whistleblower Evidence Would Likely Be Inadmissible," *Freedom of the Press Foundation blog*, Dec. 23, 2013, <https://pressfreedomfoundation.org/blog/2013/12/if-snowden-returned-us-trial-all-whistleblower-evidence-would-likely-be-inadmissible>.

²¹ Peter Baker, "Moves To Curb Spying Help Drive the Clemency Argument for Snowden," *The New York Times*, Jan. 5, 2013, www.nytimes.com/2014/01/05/us/moves-to-curb-spying-help-drive-the-clemency-argument-for-snowden.html?hpw&rref=us&r=0.

²² See Haass' tweet at <https://twitter.com/RichardHaass/status/343859243235028992>.

²³ Michael Calderone, "AP Editor: Do Not Describe Edward Snowden as a 'Whistleblower,'" *The Huffington Post*, June 10, 2013, www.huffingtonpost.com/michael-calderone/ap-snowden-whistleblower_b_3416380.html.

²⁴ Greg Miller, "Snowden Denies Stealing Passwords to Access Secret Files," *The Washington Post*, Jan. 23, 2013, www.washingtonpost.com/world/national-security/snowden-denies-stealing-passwords-to-access-secret-files/2014/01/23/d1f7d9e4-8472-11e3-8099-9181471f7aaf_story.html.

²⁵ David Kravets, "Finally, a Ruling That Recognizes Snowden as a Whistleblower," *Wired*, Dec. 19, 2013, www.wired.com/threatlevel/2013/12/snowden/.

²⁶ Evan Perez, "Judge Rules NSA Collection of Phone Records is Legal," *CNN.com*, Dec. 27, 2013, www.cnn.com/2013/12/27/justice/nsa-ruling/.

²⁷ Lilly Maier, "Better Protection for Most, But Not the Intelligence Community," *Politifact.com*, Nov. 21, 2013, www.politifact.com/truth-o-meter/promises/obameter/promise/426/increase-protections-for-whistleblowers/.

²⁸ Joe Davidson, "Obama's 'Misleading' Comment on Whistleblower Protections," *The Washington Post*, Aug. 12, 2013, www.washingtonpost.com/politics/federal_government/obamas-misleading-comment-on-whistleblower-protections/2013/08/12/eb567e3c-037f-11e3-9259-e2a-afe5a5f84_story.html.

²⁹ Joe Davidson, "Could Better Whistleblower Protections Prevent Another Snowden From Happening?" *The Washington Post*, Jan. 21, 2013, www.washingtonpost.com/politics/federal_government/could-better-whistleblower-protections-prevent-another-snowden-from-happening/2014/01/21/324b392e-82d1-11e3-bbe5-6a2a3141e3a9_story.html.

³⁰ Spencer Ackerman, "Senate Committee Approves New Whistleblower Protection Measures," *The Guardian*, Nov. 7, 2013, www.theguardian.com/world/2013/nov/07/senate-intelligence-committee-drones-whistleblower-protection.

³¹ "Whistleblower Rights for National Security and Intelligence Community Workers Advancing Again in Congress," Project on Government Oversight, Nov. 8, 2013, www.pogo.org/about/press-room/releases/2013/whistleblower-rights-for-national-security-intelligence-workers.html.

³² "Face The Nation Transcripts, Nov. 3, 2013: Feinstein, Rogers, Hayden," *CBS News.com*, Nov. 3, 2013, www.cbsnews.com/news/face-the-nation-transcripts-november-3-2013-feinstein-rogers-hayden/.

³³ "Live Q&A With Edward Snowden," *Courage Foundation*, Jan. 23, 2014, www.freesnowden.is/asksnowden/.

³⁴ "Blowing The Whistle: Barriers to Federal Employees Making Disclosures," U.S. Merit Systems Protection Board, November 2011, www.usda.gov/oig/webdocs/Blowing_The_Whistle.pdf.

³⁵ "About MSPB," U.S. Merit Systems Protection Board, www.mspb.gov/about/about.htm.

³⁶ Maier, *op. cit.*

³⁷ Robert J. McCarthy, "Blowing in the Wind: Answers for Federal Whistleblowers," *William & Mary Policy Review 184*, 2012, www.wm.edu/as/publicpolicy/wm_policy_review/Archives/Volume%203/McCarthy.pdf.

³⁸ James M. Eisenmann, "Merit Board Rep Responds to 'Disclosure' Piece," *Washington Lawyer*, June 2013, www.dcb.org/bar-resources/publications/washington-lawyer/articles/june-2013-letters.cfm.

³⁹ "Former Bush Lawyer to Spend One Day in Jail," *Legal Times.com*, June 24, 2013, <http://legaltimes.typepad.com/blt/2013/06/former-bush-lawyer-to-spend-one-day-in-jail.html>.

⁴⁰ Joe Davidson, "Under Carolyn Lerner, Special Counsel Office is Doing Its Job Now, Observers Say," *The Washington Post*, June 28, 2012, www.washingtonpost.com/politics/under-carolyn-lerner-special-counsel-office-is-doing-its-job-now-observers-say/2012/06/28/gJQAPX229V_story.html.

⁴¹ Maier, *op. cit.*

⁴² Sean Reilly, "For Office of Special Counsel, Turnaround Brings Struggle," *Federal Times*, Sept. 10, 2013, www.federaltimes.com/article/20130910/DEPARTMENTS/309100011/For-Office-Special-Counsel-turnaround-brings-struggle.

⁴³ Maier, *op. cit.*

⁴⁴ The law is PL 112-199, <https://www.govtrack.us/congress/bills/112/s743>.

⁴⁵ For background see James Kelly, "Year of the Whistleblowers," *Time*, Dec. 30, 2002.

⁴⁶ For background see Jon O. Shimabukuro, *et al.*, "Survey of Federal Whistleblower and Anti-Retaliation Laws," Congressional Research Service, April 22, 2013, <https://www.fas.org/sgp/crs/misc/R43045.pdf>.

⁴⁷ The bill is HR 2483, the Whistleblower Improvement Act, <https://www.govtrack.us/congress/bills/112/hr2483>.

⁴⁸ Andrew Joseph, "Whistleblower Bill Draws Lobbying," *Government Executive*, Jan. 10, 2012, www.govexec.com/oversight/2012/01/whistleblower-bill-draws-lobbying/35798/.

⁴⁹ Office of Rep. Michael Grimm, "Reps. Grimm, Garrett, Campbell and Stivers Introduce Whistleblower Improvement Act," July 12, 2011, <http://grimm.house.gov/press-release/rep-grimm-garrett-campbell-and-stivers-introduce-whistleblower-improvement-act>.

⁵⁰ Dana Liebelson, “Study Crushes One Argument for Rep. Grimm’s So-Called Whistleblower ‘Improvement’ Act,” Project on Government Oversight blog, June 7, 2012, <http://pogoblog.typepad.com/pogo/2012/06/study-crushes-argument-for-rep-grimms-so-called-whistleblower-improvement-act.html>.

⁵¹ Samuel Rubinfeld, “Richard Moberly on the Complexities of Obama’s Whistleblower Policies,” *The Wall Street Journal*, Jan. 14, 2013, <http://blogs.wsj.com/corruption-currents/2013/01/14/qa-richard-moberly-on-the-complexities-of-obamas-whistleblower-policies/>.

⁵² The bill is the Tax Relief and Health Care Act of 2006, PL 109-432, <https://www.govtrack.us/congress/bills/109/hr6111>.

⁵³ Paul Farhi, “Stephen Kohn Wins Another Whistleblower Case, This One for Bradley Birkenfeld,” *The Washington Post*, Sept. 11, 2012, www.washingtonpost.com/lifestyle/style/stephen-kohn-wins-another-whistleblower-case-this-one-for-bradley-birkenfeld/2012/09/11/e7e5a204-fc51-11e1-a31e-804fccb658f9_story.html.

⁵⁴ Erika Kelton, “IRS Whistleblowers See Little Reward,” *Forbes*, March 2, 2012, www.forbes.com/sites/erikakelton/2012/03/02/irs-whistleblowers-see-little-reward/.

⁵⁵ Stephen Martin Kohn, et al., *Whistleblower Law: A Guide to Legal Protections for Corporate Employees* (2004), <http://bit.ly/19zN6Rt>.

⁵⁶ For background see Charles S. Clark, “Whistleblowers,” *CQ Researcher*, Dec. 5, 1997, pp. 1059-1078; Ilyas J. Rona, “The Whistleblower Perspective: Why They Do It and Why We Need Them,” Suffolk University Law School—Continuing Legal Education (ALS), March 2011, greenellp.com/wp-content/uploads/2011/04/Ilyas-J-Rona-Whistleblower-Perspective.pdf.

⁵⁷ “History of the False Claims Act — The Whistleblower Act,” Bernstein Liebhard LLP.com, www.bernlieb.com/whistleblowers/History-Of-The-False-Claims-Act/index.html.

⁵⁸ Louis Fisher, “National Security Whistleblowers,” Congressional Research Service, Dec. 30, 2005, www.fas.org/sgp/crs/natsec/RL33215.pdf.

⁵⁹ Ben Zimmer, “The Epithet Nader Made Respectable,” *The Wall Street Journal*, July 12, 2013, <http://online.wsj.com/news/articles/SB10001424127887323368704578596083294221030>.

⁶⁰ Ralph Nader, Peter J. Petkas and Kate Blackwell, *Whistle Blowing: The Report of the Conference on Professional Responsibility* (1972), p. 7.

⁶¹ “A Timeline of Whistleblowers,” Government Accountability Project, www.whistleblower.org/about/a-timeline-of-whistleblowers.

⁶² “The Most Dangerous Man in America: The Ellsberg-Russo Trial,” PBS.org, Oct. 5, 2010, www.pbs.org/pov/mostdangerousman/photo_gallery_background.php?photo=4#.UsRTh_ZOBV4.

⁶³ Bob Woodward, “How Mark Felt Became ‘Deep Throat,’” *The Washington Post*, June 20, 2005, www.washingtonpost.com/politics/how-mark-felt-became-deep-throat/2012/06/04/gJQAlpARIV_story.html.

⁶⁴ “A Timeline of Whistleblowers,” *op. cit.*

⁶⁵ L. Paige Whitaker and Michael Schmerling, “Whistleblower Protection for Federal Employees,” Congressional Research Service, updated May 18, 1998, pp. 2-3, whistle20.tripod.com/crswhistle.pdf.

⁶⁶ Rona, *op. cit.*

⁶⁷ *Ibid.*

⁶⁸ National Whistleblowers Center, www.whistleblowers.org/index.php?option=com_content&task=view&id=741&Itemid=161; Whistleblower laws.com, www.whistleblowerlaws.com/false-claims-act/new-york-city-false-claims-act/.

⁶⁹ “A Timeline of Whistleblowers,” *op. cit.*

⁷⁰ Shelley L. Pepper, et al., “Whistle Where You Work? The Ineffectiveness of the Federal Whistleblower Protection Act of 1989 and the Promise of the Whistleblower Protection Enhancement Act of 2012,” *Review of Public Personnel Administration*, Oct. 22, 2013, rop.sagepub.com/content/early/2013/10/17/0734371X13508414.abstract.

⁷¹ “A Timeline of Whistleblowers,” *op. cit.*

⁷² *Ibid.*

⁷³ “Sherron’s Bio,” SherronWatkins.com, www.sherronwatkins.com/sherronwatkins/Sherrons_Bio.html.

⁷⁴ Greg Farrell, “WorldCom’s Whistleblower Tells Her Story,” *USA Today*, Feb. 14, 2008, http://usatoday30.usatoday.com/money/companies/regulation/2008-02-14-cynthia-cooper-whistleblower_n.htm.

⁷⁵ Jon O. Shimabukuro, et al., “Survey of Federal Whistleblower and Anti-Retaliation Laws,” Congressional Research Service, April 22, 2013, http://digitalcommons.ilr.cornell.edu/key_workplace/1138/.

⁷⁶ “Global Anti-Bribery and Corruption Survey 2011,” KPMG, Jan. 6, 2011, www.kpmg.com/uk/en/issuesandinsights/articlespublications/pages/global-abc-survey-2011.aspx.

⁷⁷ Richard Moberly, “Sarbanes-Oxley’s Whistleblower Provisions — Ten Years Later,” *South Carolina Law Review* 1 (2012), May 21, 2012, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2064061.

⁷⁸ Jerry Markon and Dan Eggen, “FBI Erred Widely in Moussaoui Probe, Report Says,” *The Washington Post*, June 20, 2006, www.washingtonpost.com/wp-dyn/content/article/2006/06/19/AR2006061901303.html.

⁷⁹ “A Timeline of Whistleblowers,” *op. cit.*

⁸⁰ Erik Eckholm, “Army Corps Agrees to Pay Whistle-Blower in Iraq Case,” *The New York Times*, July 28, 2011, www.nytimes.com/2011/07/29/world/middleeast/29reconstruct.html.

⁸¹ *Garcetti et al. v. Ceballos*, 361 F. 3d 1168, www.law.cornell.edu/supct/html/04-473.ZS.html.

⁸² “Whistleblower Protection Enhancement Act Passes Through Congress,” Public Citizen news release, Sept. 28, 2012, www.citizen.org/pressroom/pressroomredirect.cfm?ID=3718.

⁸³ “Lawmakers Introduce Military Whistleblower Protection Act,” *FederalDaily*, Nov. 22, 2013, <http://federaldaily.com/articles/2013/11/22/lawmakers-introduce-military-whistleblower-protection-act.aspx>.

⁸⁴ Dylan Blaylock, “Senate Approves Military Whistleblower Protection Act Makeover,” Government Accountability Project blog, Dec. 20, 2013, www.whistleblower.org/blog/44-2013/3123-senate-approves-military-whistleblower-protection-act-makeover.

⁸⁵ Office of Sen. Patrick Leahy, “Senate Unanimously Passes Leahy-Grassley Bill To Protect Whistleblowers in Criminal Antitrust Cases,” Nov. 5, 2013, www.leahy.senate.gov/press/senate-unanimously-passes-leahy-grassley-bill-to-protect-whistleblowers-in-criminal-antitrust-cases.

⁸⁶ “POGO Endorses National Security Workforce Accountability Bill,” Project on Government Oversight, Dec. 13, 2013, www.pogo.org/about/press-room/releases/2013/pogo-endorses-national-security-workforce.html.



About the Author

Chuck McCutcheon is a freelance writer in Washington, D.C. He has been a reporter and editor for *Congressional Quarterly* and Newhouse News Service and is co-author of the 2012 and 2014 editions of *The Almanac of American Politics*. He also has written books on climate change and nuclear waste.

⁸⁷ “Statement in Response to Ruling on Kaplan v. Conyers,” U.S. Office of Special Counsel, Aug. 21, 2013, www.osc.gov/documents/press/2013/pr13_06.pdf.

⁸⁸ Jack Moore, “Whistleblower Cases Have Gone ‘Through the Roof,’ Even as OSC Faces Uncertain Budget,” FederalNewsRadio.com, Dec. 2, 2013, www.federalnewsradio.com/521/3516823/Whistleblower-cases-have-gone-through-the-roof-even-as-OSC-faces-uncertain-budget.

⁸⁹ “Rogers: Omnibus Targets Funding to Important Programs, Continues Downward Trend in Federal Spending,” U.S. House Appropriations Committee, Jan. 13, 2014, <http://appropriations.house.gov/news/documentsingle.aspx?DocumentID=366721>.

⁹⁰ “Department of Energy’s Bonneville Power Administration: Discriminating Against Veterans and Retaliating Against Whistleblowers,” House Oversight and Government Reform Committee website, Aug. 1, 2013, <http://oversight.house.gov/hearing/department-of-energys-bonneville-power-administration-discriminating-against-veterans-and-retaliating-against-whistleblowers/>.

⁹¹ Statement of Rep. Darrell Issa, “OGR Full Committee Hearing: Department of Energy’s Bonneville Power Administration: Discriminating Against Veterans and Retaliating Against Whistleblowers,” Aug. 1, 2013, <http://oversight.house.gov/hearing/department-of-energys-bonneville-power-administration-discriminating-against-veterans-and-retaliating-against-whistleblowers/#>.

⁹² Matt Gertz, “Explainer: A Year of Benghazi Myths,” Media Matters for America website, Sept. 11, 2013, <http://mediamatters.org/blog/2013/09/11/explainer-a-year-of-benghazi-myths/195821#lefttodie3>.

⁹³ “Salmon Introduces Bill Establishing Whistleblower Protections for Union Employees,” Office of Rep. Matt Salmon, Dec. 3, 2013, <http://salmon.house.gov/media-center/press-releases/salmon-introduces-bill-establishing-whistle-blower-protections-for-union>.

⁹⁴ Sara Begley, “New OSHA Form Will Fan the Flames in Whistleblower Filings,” *Forbes*, Sept. 5, 2011, www.forbes.com/sites/theemploymentbeat/2013/09/05/new-osha-form-will-fan-the-flames-in-whistle-blower-filings/.

⁹⁵ Phillip Swarts, “Defense Department Looks to Publicize Overlooked Whistleblower Hotline,” *The Washington Times*, Nov. 13, 2013, www.washingtontimes.com/news/2013/nov/13/defense-department-looks-publicize-overlooked-whis/?page=all.

⁹⁶ Jonathan Sack, “More Incentives for Whistleblowers: New York Considers a New Law to

FOR MORE INFORMATION

Government Accountability Project, 1612 K St., N.W., Suite 1100, Washington, DC 20006; 202-408-0034; www.whistleblower.org. Advocacy group founded 28 years ago to represent whistleblowers, among other watchdog duties.

Merit Systems Protection Board, 1615 M St., N.W., Washington, DC 20419; 202-653-7200; www.mspb.gov. Quasi-judicial agency that hears cases of alleged retaliation against whistleblowers.

National Whistleblower Center, PO Box 3768, Washington, DC 20007; 202-342-1902; www.whistleblowers.org. Legal-advocacy group that runs an attorney-referral service, mounts test-case litigation and provides other services.

Office of Special Counsel, 1730 M St., N.W., Washington, DC 20036; 202-254-3600; www.osc.gov. Federal agency that investigates whistleblower reports and other employee allegations.

Project on Government Oversight, 666 11th St., N.W., Suite 500, Washington DC 20001; 202-347-1122; www.pogo.org. Watchdog group that investigates alleged government misconduct and works with whistleblowers and advocates on their behalf.

U.S. Court of Appeals for the Federal Circuit, 717 Madison Place, N.W., Washington DC 20439; 202-633-6550; www.fedcir.gov. Hears federal government whistleblower cases; website contains texts of relevant decisions.

Reward and Protect Whistleblowers,” *Forbes*, Oct. 9, 2013, www.forbes.com/sites/insider/2013/10/09/more-incentives-for-whistleblowers-new-york-considers-a-new-law-to-reward-and-protect-whistleblowers/.

⁹⁷ “Minnesota Expands State’s Whistleblower Law,” Keller Grover LLP, Oct. 9, 2013, www.kellergroverwhistleblowerlawyers.com/minnesota-expands-states-whistleblower-law_10823.html.

⁹⁸ Keith A. Goodwin and Laura Reathaford, “New California Law Expands Protections for Whistleblowers,” Proskauer-Rose LLP’s “California Employment Law Update,” Dec. 12, 2013, <http://calemploymentlawupdate.proskauer.com/2013/12/articles/retaliation/new-california-law-expands-protections-for-whistleblowers/>.

⁹⁹ “Neuman: Pa. Loses Millions of Dollars For Lack of False Claims Act,” Office of Pennsylvania Rep. Brandon Neuman, Nov. 4, 2013, www.pahouse.com/neuman/PAHouseNews.asp?doc=33494.

¹⁰⁰ Charles S. Clark, “Attorney: Supreme Court Leaning Toward Maintaining Fed Whistleblower Rights,” Government Executive, Nov. 12, 2013, www.govexec.com/management/2013/11/attorney-supreme-court-leaning-toward-maintaining-fed-whistleblower-rights/73676/.

¹⁰¹ Lawrence Hurley, “U.S. Justices Probe Private Company Whistleblower Protections,” Reuters, Nov. 12, 2013, www.reuters.com/article/2013/11/12/us-usa-court-whistleblowers-idUSBRE9AB19720131112.

¹⁰² Marshall Walker, “Supreme Court to Potentially Review Two False Claims Act Cases,” Rabon Law Firm’s “National Whistleblower” blog, Nov. 20, 2013, www.nationalwhistleblower.com/blog/2013/11/supreme-court-potentially-review-fourth-circuit-fca-cases/.

¹⁰³ Charles S. Clark, “Justice, DHS Lose Round in TSA Whistleblower Case,” Government Executive, Sept. 4, 2013, www.govexec.com/management/2013/09/justice-mspb-lose-round-tsa-whistleblower-case/69918/?oref=river.

¹⁰⁴ “Edward Snowden, Whistleblower,” *The New York Times*, Jan. 1, 2014, www.nytimes.com/2014/01/02/opinion/edward-snowden-whistleblower.html.

¹⁰⁵ Brian Ross and Rhonda Schwartz, “More NSA Leakers Followed Snowden’s Footsteps, Whistleblower Lawyer Says,” ABC News.com, Oct. 31, 2013, <http://abcnews.go.com/blogs/headlines/2013/10/more-nsa-leakers-followed-snowdens-footsteps-whistleblower-lawyer-says/>.

¹⁰⁶ Runa A. Sandvik, “Freedom of the Press Foundation to Release New Version of Anonymous Whistleblower Submission System,” *Forbes*, Dec. 5, 2013, www.forbes.com/sites/runasandvik/2013/12/05/freedom-of-the-press-foundation-to-release-new-version-of-anonymous-whistleblower-submission-system/.

¹⁰⁷ Terence Healy, “The Year of the Whistleblower,” *Forbes*, Jan. 8, 2014, www.forbes.com/sites/theemploymentbeat/2014/01/08/2014-the-year-of-the-whistleblower.

Bibliography

Selected Sources

Books

Devine, Tom, and Tarek F. Maassarani, *The Corporate Whistleblower's Survival Guide: A Handbook for Committing the Truth*, Berrett-Koehler Publishers, 2011.

The legal director of the Government Accountability Project (Devine) and an attorney (Maassarani) explain the legal rights of private-sector whistleblowers.

Greenberg, Andy, *This Machine Kills Secrets: Julian Assange, the Cypherpunks, and Their Fight to Empower Whistleblowers*, Plume, 2013.

A writer for *Forbes* magazine traces the sagas of prominent national-security leakers from Daniel Ellsberg to Julian Assange.

Kohn, Stephen Martin, *The Whistleblower's Handbook: A Step-by-Step Guide to Doing What's Right and Protecting Yourself*, Lyons Press, 2011.

A prominent whistleblower advocate and lawyer advises potential whistleblowers.

Vaughn, Robert G., *Successes and Failures of Whistleblower Laws*, Edward Elgar Publications, 2013.

An American University law professor who has studied whistleblowing for decades examines how the activity has become more prevalent in the United States as well as in other countries and explains each nation's laws.

Articles

"What Makes a Whistleblower?" WBUR.org, Aug. 16, 2013, <http://hereandnow.wbur.org/2013/08/16/whistleblowing-fairness-loyalty>.

A syndicated radio show examines research by Northwestern University and Boston College scientists about what motivates whistleblowers to come forward.

Cohan, William D., "Was This Whistleblower Muzzled?" *The New York Times*, Sept. 21, 2013, www.nytimes.com/2013/09/22/opinion/sunday/was-this-whistle-blower-muzzled.html.

A journalist examines the case of Richard M. Bowen III, a former Citigroup executive who exposed wrongdoing and was subsequently fired.

Ludlow, Peter, "The Banality of Systemic Evil," *The New York Times*, Sept. 15, 2013, http://opinionator.blogs.nytimes.com/2013/09/15/the-banality-of-systemic-evil/?_r=0.

A Northwestern University philosophy professor examines the moral underpinnings of Edward Snowden as well as other national-security leakers and Internet activists.

Mayer, Jane, "The Secret Sharer," *The New Yorker*, May 23,

2011, www.newyorker.com/reporting/2011/05/23/110523fa_fact_mayer.

A journalist examines the case against Thomas Drake, a National Security Agency whistleblower accused of harming national security — but subsequently exonerated — after revealing problems with one of the spy agency's programs.

Reports and Studies

"Blowing the Whistle: Barriers to Federal Employees Making Disclosures," U.S. Merit Systems Protection Board, 2011, www.mspb.gov/studies/browsestudies.htm.

A federal agency compares surveys in 1992 and 2010 to describe how perceptions of retaliation against federal whistleblowers remains a serious problem.

Dasgupta, Siddhartha, and Ankit Kesharwani, "Whistleblowing: A Survey of Literature," *IUP Journal of Corporate Governance*, 2010, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1737567.

The authors highlight literature regarding the types of whistleblowing and the process, as well as the motivations of whistleblowers and the consequences of their actions.

McCarthy, Robert J., "Blowing in the Wind: Answers for Federal Whistleblowers," *William & Mary Policy Review*, 2012, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2119239.

A former federal agency lawyer cites what he contends are flaws with the Merit Systems Protection Board's handling of whistleblower cases and makes suggestions for improvements.

Moberly, Richard, "Sarbanes-Oxley's Whistleblower Provisions: Ten Years Later," *South Carolina Law Review*, 2012, <http://digitalcommons.unl.edu/lawfacpub/154/>.

A University of Nebraska professor studies the successes and failures of the 2002 Sarbanes-Oxley law that strengthened protections for private-sector whistleblowers.

Rapp, Geoffrey Christopher, "Four Signal Moments in Whistleblower Law: 1983-2013," *Hofstra Labor and Employment Journal*, 2013, papers.ssrn.com/sol3/papers.cfm?abstract_id=2344447.

A University of Toledo law professor reviews four whistleblower laws, from the 1986 False Claims Act to the 2009 Dodd-Frank law.

Shimabukuro, Jon O., et al., "Survey of Federal Whistleblower and Anti-Retaliation Laws," *Congressional Research Service*, April 22, 2013, <https://www.fas.org/sgp/crs/misc/R43045.pdf>.

The authors explain the dozens of different federal laws relating to whistleblowing.

The Next Step:

Additional Articles from Current Periodicals

National Security

“Edward Snowden, Whistle-Blower,” *The New York Times*, Jan. 1, 2014, www.nytimes.com/2014/01/02/opinion/edward-snowden-whistle-blower.html.

The paper’s editorial board argues that Snowden did not jeopardize U.S. national security and should be offered a plea bargain or clemency.

Clark, Charles S., “National Security Whistleblowers Could Win New Protections,” *Government Executive*, Nov. 8, 2013, www.govexec.com/management/2013/11/national-security-whistleblowers-could-win-new-protections/73514/.

The Senate Intelligence Committee voted 13-12 to approve a fiscal 2014 intelligence bill that would give national-security whistleblowers an official channel to make disclosures.

Dozier, Kimberly, “Lawmakers: Snowden’s leaks may endanger US troops,” *The Associated Press*, Jan. 9, 2014, www.bigstory.ap.org/article/lawmakers-snowdens-leaks-may-endanger-us-troops.

Two congressmen say most of the documents leaked by former NSA contractor Edward Snowden were about current military operations and could endanger troops overseas.

Obama Administration

Blake, Aaron, “Greenwald: Obama engaged in ‘unprecedented war on whistleblowers,’” *The Washington Post*, July 2, 2013, www.washingtonpost.com/blogs/post-politics/wp/2013/07/02/greenwald-obama-engaged-in-unprecedented-war-on-whistleblowers/.

The journalist who published Edward Snowden’s leaks on NSA surveillance programs says the Obama administration is attacking whistleblowers from revealing illegal government activity.

Boyer, David, “Obama blamed for NSA spying revelations by whistleblower advocate group,” *The Washington Times*, June 11, 2013, www.washingtontimes.com/news/2013/jun/11/obama-blamed-nsa-spying-revelations-whistleblower/?page=all.

The Obama administration says it has strengthened protection for whistleblowers who use proper channels, but a whistleblower advocate group says Obama has stripped protections for national-security whistleblowers.

Greenberg, Jon, “CNN’s Tapper: Obama has used Espionage Act more than all previous administrations,” *The Tampa Bay Times*, Jan. 10, 2014, www.politifact.com/punditfact/statements/2014/jan/10/jake-tapper/cnns-tapper-obama-has-used-espionage-act-more-all/.

The Obama Administration has used the Espionage Act seven times against government workers who shared information with the press, more than all previous administrations combined.

Private Sector

Hurley, Lawrence, “U.S. justices probe private company whistleblower protections,” Reuters, Nov. 12, 2013, www.reuters.com/article/2013/11/12/us-usa-court-whistleblowers-idUSBRE9AB19720131112.

Supreme Court justices are considering whether private contractors at public companies are protected.

Smith, Jennifer, “Companies on Guard for New Legal Pitfalls,” *The Wall Street Journal*, Jan. 5, 2014, <http://online.wsj.com/news/articles/SB10001424052702303640604579298710673486356>.

Many large companies are scrutinizing their operations, including interior threats, as federal whistleblower bounties grow.

Protection

Davidson, Joe, “Could better whistleblower protections prevent another Snowden from happening?” *The Washington Post*, Jan. 21, 2014, www.washingtonpost.com/politics/federal-government/could-better-whistleblower-protections-prevent-another-snowden-from-happening/2014/01/21/324b392e-82d1-11e3-bbe5-6a2a3141e3a9_story.html.

The reporter says whistleblowers need more legal protection and a fair process for pursuing their concerns.

Moshirnia, Anthony Navid, “False Claims Act Whistleblower Bounties Exceed \$345 Million in Fiscal Year 2013,” *The National Law Review*, Jan. 21, 2014, www.natlawreview.com/article/false-claims-act-whistleblower-bounties-exceed-345-million-fiscal-year-2013.

A law associate says the government paid whistleblowers \$345 million during fiscal year 2013 under the False Claims Act.

CITING CQ RESEARCHER

Sample formats for citing these reports in a bibliography include the ones listed below. Preferred styles and formats vary, so please check with your instructor or professor.

MLA STYLE

Jost, Kenneth. “Remembering 9/11.” *CQ Researcher* 2 Sept. 2011: 701-732.

APA STYLE

Jost, K. (2011, September 2). Remembering 9/11. *CQ Researcher*; 9, 701-732.

CHICAGO STYLE

Jost, Kenneth. “Remembering 9/11.” *CQ Researcher*, September 2, 2011, 701-732.

In-depth Reports on Issues in the News

Are you writing a paper?

Need backup for a debate?

Want to become an expert on an issue?

For 90 years, students have turned to *CQ Researcher* for in-depth reporting on issues in the news. Reports on a full range of political and social issues are now available. Following is a selection of recent reports:

Civil Liberties

Religious Repression, 11/13
Solitary Confinement, 9/12
Re-examining the Constitution, 9/12
Voter Rights, 5/12

Crime/Law

Racial Profiling, 11/13
Domestic Violence, 11/13
Border Security, 9/13
Gun Control, 3/13
Improving Cybersecurity, 2/13
Supreme Court Controversies, 9/12

Education

Humanities Education, 12/13
Law Schools, 4/13
Homeless Students, 4/13
Plagiarism and Cheating, 1/13

Environment/Society

National Parks, 1/14
Big Data and Privacy, 10/13
Future of the Arctic, 9/13
Women and Work, 7/13
Telecommuting, 7/13
Climate Change, 6/13

Health/Safety

Chemical & Biological Weapons, 12/13
Lyme Disease, 11/13
Domestic Drones, 10/13
Regulating Pharmaceuticals, 10/13
Worker Safety, 10/13
Alternative Medicine, 9/13

Politics/Economy

Minimum Wage, 1/14
The Federal Reserve, 1/14
Government Spending, 7/13
Unrest in the Arab World, 2/13

Upcoming Reports

Resurgent Russia, 2/7/14

Media Violence, 2/14/14

Polarized Society, 2/21/14

ACCESS

CQ Researcher is available in print and online. For access, visit your library or www.cqresearcher.com.

STAY CURRENT

For notice of upcoming *CQ Researcher* reports or to learn more about *CQ Researcher* products, subscribe to the free email newsletters, *CQ Researcher Alert!* and *CQ Researcher News*: <http://cqpress.com/newsletters>.

PURCHASE

To purchase a *CQ Researcher* report in print or electronic format (PDF), visit www.cqpress.com or call 866-427-7737. Single reports start at \$15. Bulk purchase discounts and electronic-rights licensing are also available.

SUBSCRIBE

Annual full-service *CQ Researcher* subscriptions—including 44 reports a year, monthly index updates, and a bound volume—start at \$1,054. Add \$25 for domestic postage.

CQ Researcher Online offers a backfile from 1991 and a number of tools to simplify research. For pricing information, call 800-818-7243 or 805-499-9774 or email librarysales@sagepub.com.

CQ RESEARCHER PLUS ARCHIVE

GET ONLINE ACCESS TO VITAL
ISSUES FROM 1923 TO THE PRESENT



CQ Researcher Plus Archive delivers fast, online access to every *CQ Researcher* report from 1991 to the present, PLUS lets you explore the complete archive of *Editorial Research Reports**

from 1923-1990. Search and browse more than 3,800 in-depth reports.

Loaded with handy online features, *CQ Researcher Plus Archive* provides the trustworthy reporting and the advanced online functionality today's researchers demand. The "Issue Tracker" feature provides quick links to past and present reports on the specific topics you need.

For a free trial, visit:

<http://library.cqpress.com/static.php?page=freetrial>

For pricing information, call 800-818-7243 or 805-499-9774 or e-mail librarysales@sagepub.com

**Editorial Research Reports*, the predecessor to *CQ Researcher*, provides the same expert, nonpartisan reporting on the vital issues that have shaped our society.

CQ Press • 2300 N Street, NW, Suite 800 • Washington, DC 20037