

Whistleblower Protection in the United States Government

Presented by Elaine Kaplan, Special Counsel, U.S. Office of Special Counsel, at the Vice President's Conference on Fighting Corruption Among Justice and Security Officials (February 24, 1999)

1. The Role of the Whistleblower in the Fight Against Government Corruption

I have been asked to discuss with you today the concept of whistleblower protection and the role it plays in the fight against government corruption. I think it is fair to say that without effective protections for whistleblowers any anti-corruption effort is doomed to fail because it denies those seeking to root out official corruption the most valuable source of information about its existence—public employees.

The policies that underlie whistleblower protection laws are clear. They are designed to foster an environment in which public employees feel free to publicly disclose misconduct that they discover during the course of their employment—through public disclosure, the misconduct will be discovered and corrected. In addition, official misconduct will be deterred because the offenders will know that their actions will not go undetected.

The theory is that public employees—because of their work—are uniquely situated to bring attention to official corruption—they are valuable instruments of good government.

At the same time, unlike private citizens in a democracy, they are uniquely vulnerable to retaliation by the very officials and institutions whose corruption they have disclosed. At the one extreme, those officials have the power to take away a whistleblower's livelihood and destroy their professional reputation. Or they can, in more subtle ways, make their daily work lives miserable by isolating them or denying them work assignments and opportunities for advancement.

In the United States, we call these employees—who risk their livelihoods to bring misconduct to light—whistleblowers. The word itself is of relatively recent origin. It seems to have come into use sometime in the late 1960s or early 1970s. Its basis is clear—like a police officer or soccer referee—a whistleblower makes a loud noise to bring attention to a violation of the laws or rules.

I have been told on occasion that in some cultures, there is a negative connotation to blowing the whistle—that another name for a “whistleblower” is “informer.” Informers, of course, are generally feared and disdained. But they are different from whistleblowers. Informers act at the behest of officials, and in their own self-interest. Whistleblowers generally are viewed as anti-authoritarians who act in the public interest, often against their own self interest.

Our popular culture reflects the high esteem in which we hold whistleblowers- In the United States. popular movies such as “Serpico” and “Silkwood” have been made about whistleblowers. The films and popular literature glorify the individual who takes on the system at great personal risk. In our culture such individuals are viewed as heroes.

As I will now describe. our laws and legal institutions similarly reflect the value we give to whistleblowers.

7. The Role of the U.S. Office of Special Counsel in Protecting Government Whistleblowers

My agency, the United States Office of Special Counsel (OSC), was established about 10 years ago, with one of its primary purposes the protection of whistleblowers.

a. OSC was established in the wake of well publicized allegations of retaliation by federal agencies against employees who publicly disclosed wasteful spending and contract abuses-particularly in the defense agencies. A perception arose that employees felt intimidated and, notwithstanding their awareness of corruption and official misconduct, would not go public for fear of losing their jobs. It was felt that public employees needed legal protection and, moreover an advocate that could enforce those protections.

b. OSC's job is to receive complaints of retaliation, investigate them, and, in appropriate cases, pursue legal remedies. These include corrective action for the injured employee (for example reinstatement to their jobs, backpay, and other forms of compensation). The remedies OSC may seek also include the discipline of agency officials who engage in such retaliation. An independent adjudicatory agency-the Merit Systems Protection Board-resolves complaints that OSC brings against other federal agencies. with some opportunity for review in our federal courts.

In addition, OSC also serves as a channel for employees to anonymously disclose official misconduct. While each federal agency has an Office of Inspector General that is devoted to receiving such disclosures, OSC has government-wide jurisdiction. It can receive disclosures from any federal employee and, in appropriate cases, forward them to the head of the relevant federal agency for an investigation and report which becomes a public document and is transmitted to the President and our Congress.

c. We are an interesting sort of government agency because we are independent of the executive branch. I was appointed by the President, with the approval of the U.S. Senate. But I do not serve at the pleasure of the President. I have a fixed term of five years and I can only be removed for misconduct or malfeasance. My staff is composed largely of career federal employees who have civil service protections that prevent them from being subject to political control.

