



GOVERNMENT
ACCOUNTABILITY
PROJECT

DEMOCRACY PROTECTION INITIATIVE

BEARING WITNESS



A guide to whistleblowing
for faith leaders and
communities.



AS OUR NATION FACES GRAVE CHALLENGES, GOVERNMENT ACCOUNTABILITY PROJECT HAS LAUNCHED THE FAITH-BASED PROJECT, BEARING WITNESS, AS PART OF ITS DEMOCRACY PROTECTION INITIATIVE, TO SPECIFICALLY RECOGNIZE THE UNIQUE MORAL COURAGE THAT FAITH COMMUNITIES BRING TO TRUTH-TELLING IN THE PUBLIC SQUARE.

Bearing Witness provides important free new resources for clergy, faith leaders, and faith communities to help them responsibly support and counsel community members who may witness immoral, unethical and illegal acts in government-associated workplaces, and want to come forward with information about threats to our democracy. Bearing Witness can also connect potential whistleblowers with experts, including pro bono legal counsel.

As the leading whistleblower organization in the world for over 40 years, the nonpartisan and nonprofit Government Accountability Project, founded by Louis Clark (also an ordained Methodist minister), has been on the forefront of increasing legal protections for whistleblowers across the U.S. and abroad. Government Accountability Project has tirelessly promoted government and corporate accountability by protecting whistleblowers and ensuring their disclosures make a difference. Its team of experts has provided legal and advocacy assistance to thousands of employees of conscience who have chosen to speak out on serious abuses of the public trust.

Recent work with whistleblowers has exposed immigration detention abuses including hysterectomies performed without informed consent, the politicization of the Department of Justice, and health and safety threats from failures to address the spread of COVID-19. They've helped raise the alarm on issues ranging from illegal electronic surveillance of American citizens to climate science censorship to unsafe food and drugs.

The need for truth-tellers did not end on Election Day. Our nation is in a period of particular instability as votes are at risk of suppression, as we enter a lame duck period, and as the next few years proceed with uncertainty. Some whistleblowers will be motivated by their faith and will turn to clergy, who are bound by strict legal and moral confidentiality, and serve as important confidants. These employees need the solid support of their faith communities.

Working with whistleblowers, however, is complex. Security and safety, vetting and legal support, staying private versus going public, psychological, emotional and spiritual health and more need taken into careful account. That's why Bearing Witness offers reliable resources to help clergy, faith leaders and faith communities effectively counsel friends, neighbors and congregants, and to help congregations provide the vital community support whistleblowers and their families need as they come forward at great personal and professional risk.

We invite you to affirm whistleblower rights and protections as voices of critical importance to the truth, accountability and justice upon which our democracy will flourish. Bearing Witness is here to help.

WHAT YOU NEED TO KNOW: THE DEMOCRACY PROTECTION INITIATIVE'S BEARING WITNESS

WHO ARE WHISTLEBLOWERS?

A whistleblower might be any member of your congregation who has seen or experienced wrongdoing in their workplace and found the courage to disclose:

- a violation of law, rule, or regulation;
- gross mismanagement, gross waste of funds, or abuse of authority;
- or a substantial and specific danger to public health or safety.

Whistleblowers play a valuable accountability role when officials feel they can flout the rule of law, ethical norms, and our nation's balance of powers; increase political interference into the justice system; tamper with elections; unravel health, safety and environmental policies; censor information; misuse the military; improperly deal with foreign powers; and other abuses of authority and violations of law.

THE TRUTH ABOUT WHISTLEBLOWERS: TACKLING MISPERCEPTIONS

Despite the important role whistleblowers have played in bearing witness to and exposing abuses of power, historically the term “whistleblower” has had negative connotations, although that is changing. In a recent Marist poll, 86% of respondents strongly believe that whistleblowers who report corporate or government fraud deserve protection from harm. Still, misperceptions about whistleblowers and whistleblowing persist. Here are some additional truths you need to know to share with your congregations and organizations:

TRUTH #1: Almost all whistleblowers first report concerns internally. Most employees who witness wrongdoing in the workplace stay silent. The reason for silence is cynicism or the belief that disclosure will not make a difference. The second reason is fear of retaliation. Of those who do decide to speak up, over 95% of them try to solve the problem internally first.

TRUTH #2: Most employees are legally considered protected “whistleblowers” when they first raise concerns internally, such as to a manager or supervisor. While some whistleblower protection laws require employees to report concerns to specific government entities to be protected from retaliation, the majority protect disclosures made internally first, which is consistent with how most employees first report misconduct. It is a misperception that whistleblowers are only employees who make disclosures to the media.

TRUTH #3: Whistleblowers are typically motivated by a sense of moral or civic duty, and are often influenced by their faith, as well as the seriousness of the misconduct or degree of harm. Contrary to popular belief, it's not about the money. Most whistleblower protection laws – those that cover government employees and many others – do not have award provisions. Though some corporate-specific whistleblower laws offer whistleblowers a percentage of the portion of money recovered as an incentive for reporting, it's rare that a whistleblower receives a monetary reward.

TRUTH #4: Disclosing evidence of wrongdoing is not a crime. It is a legally protected right. That is true for virtually every whistleblower. One exception: Intelligence Community (IC) whistleblowers are unique, as they have very few legal protections and immense vulnerabilities. In these cases, the whistleblowers often must choose to commit a crime – revealing classified information – in order to report more significant crimes. This ethical catch-22 may leave whistleblowers feeling even more conflicted and in need of spiritual guidance.

WHY FAITH LEADERS ARE IMPORTANT TO WHISTLEBLOWING

Pews are filled with employees across the spectrum of federal, state and municipal agencies, law enforcement, scientists and essential workers, political parties, government contractors and more who may find themselves in the unenviable position of bearing witness to, or being compelled to engage in or cover up, what they believe is wrong.

Wrongdoing at the highest levels has already prompted a wave of whistleblowers – employees and contractors who increasingly find themselves in situations that test them both professionally and personally. We expect more people of conscience and courage to come forward in the days and months to come.

Being forced to choose between listening to one's conscience or following unethical or illegal orders can cause profound inner conflict. Whistleblowers may feel conflicted about speaking out in the face of witnessing wrongdoing, knowing that doing so can invite retaliation and harm to one's profession, family, privacy, and relationships in their workplace and even their faith communities. In need of spiritual and expert support, potential whistleblowers will often seek guidance from those they trust and can speak to in confidence. Many will turn to clergy. Clergy, bound by strict legal and moral confidentiality, are important confidants for their communities.

Clergy need to be well-prepared to counsel friends, neighbors and congregants in precarious and compromised work situations to help them navigate these complex situations. Likewise, whistleblowers need their faith communities to understand and affirm the essential role truth-tellers play as catalysts for accountability and justice. This call to bear witness is nonpartisan and multi-faith.

CLERGY PRIVILEGE AND ETHICAL NORMS

Legally, in most U.S. states, private communications between clergy and whistleblowers are privileged, meaning they can remain protected from disclosure even during litigation, with some exceptions. This is often referred to as the clergy-penitent or priest-penitent privilege; it is also known as the clergy privilege, the confessional privilege, the clergy-communicant privilege, the ecclesiastical privilege, confidentiality of communications, or "trusts" of confidences, and is similar conceptually to the attorney-client privilege. Whistleblowers are likely to be aware of the concept of this privilege, putting faith leaders and clergy in the unique position of being the first, or only, person to whom they make disclosures. Faith leaders and clergy should encourage whistleblowers to seek legal guidance and treat the disclosures as confidential and privileged for the protection of the individual.

In addition, clergy and faith leaders have specific oaths and contracts with their religion and institution, most of which bind them in strict confidentiality when individuals come to them seeking spiritual guidance. These agreements are often unique to their faith and individual religious institution. When a whistleblower makes a disclosure to a faith leader or clergy person in the course of seeking spiritual advice, these leaders are ethically, as well as often legally, bound to confidentiality by these ethical codes of conduct.



UNDERSTAND THE RISK OF REPRISAL

Most federal and state whistleblower laws prohibit employers from retaliating against employees for reporting serious wrongdoing. The Whistleblower Protection Act, which applies to most federal workers, prohibits employers from taking, failing to take, or threatening to take personnel actions against an employee for disclosing information they reasonably believe evidences a violation of law, rule or regulation, gross mismanagement, a gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. Federal workers are additionally protected for refusing to obey an illegal order.

That said, whistleblower laws are complex, leaving some whistleblowers vulnerable to swift retaliation aimed at destroying the messenger, deflecting from the alleged misconduct, and deterring other employees from speaking up. No matter how righteous their intent, employees who speak out can suffer a range of reprisals, including: retaliatory investigations, gag orders, removal of duties or resources, reassignment, public humiliation, surveillance, management efforts to recruit complaints by peers, poor performance appraisals, threats, harassment, termination, violence, and lawsuits for defamation.

Allies that support whistleblowers – including faith leaders, journalists and advocacy organizations – are also vulnerable to retaliation. It is important to consult with a legal expert before taking any actions that would implicate your religious institution or congregation. We remind you that the Government Accountability Project is well-prepared to offer free legal counsel.

WHISTLEBLOWER LAW IS COMPLICATED

As a faith leader, you should not try to offer legal advice to whistleblowers who come to you with disclosures. While various rights and remedies exist in both federal and state laws to encourage workers to blow the whistle on serious abuses, the legal landscape is complicated. No single law protects all whistleblowers; instead, a patchwork of more than 60 federal statutes and numerous state and local laws provide redress. Each law has different remedies, different procedural steps, and different paths for enforcement. Evaluating possible legal options requires analyzing the type of worker one is (government, contractor, private, union member, etc.), which agencies are involved, the content of the disclosure, to whom the disclosure should be (or was) made, and what kind of reprisal was suffered.

All employees thinking about reporting misconduct should consult with experienced attorneys who specialize in whistleblower law to assess potential legal rights and remedies available at the federal, state and local levels. Because it can also be difficult to navigate the legal process once a particular path is chosen, it is best, if possible, to get responsible legal advice prior to making disclosures.

ANONYMITY: CHALLENGES & CONSEQUENCES

Many whistleblowers want to disclose information while maintaining their anonymity. However, anonymity is not always possible to ensure. Because the majority of whistleblowers raise concerns internally first, information is often tied to an employee's job duties and expertise. Thus, when information is disclosed publicly it has the whistleblower's fingerprints on it, making it possible to discover the source's identity.

When a whistleblower chooses to go public with their identity, it can be easier to show that their employer had knowledge of their whistleblowing, a necessary element in asserting their legal rights to fight retaliation. Going public can also help preempt retaliation, both by putting an employer on notice and by surrounding the whistleblower with allies – advocacy groups, journalists, champions in Congress, a lawyer and, of course, their faith community – who can help shift focus to the wrongdoing and effectively undermine efforts to vilify the messenger.

Due to limited privileges afforded journalists and public interest groups, whistleblowers should be wary of promises of absolute anonymity because it simply cannot be guaranteed. Congregants who come to faith leaders with disclosures should be encouraged to get advice from experienced lawyers.

MAINTAINING TRUST WITH WHISTLEBLOWERS

Often whistleblowers are bewildered and scared not only by the risks they have assumed, but by an alien world in which they find themselves. This is entirely new territory for people who do not think of themselves as truth-tellers and have no experience navigating the landscape of news, politics or advocacy tactics. Often, their place of worship is the only place they feel safe opening up.

Take their disclosures seriously. Feeling heard is significant for whistleblowers to open up further and faith leaders have this unique aptitude. As a faith advisor to a whistleblower, you likely already have their trust. You can keep this intact by ensuring the paramount importance of their protection. Be clear about confidentiality from the beginning, including your commitment as a faith leader to maintaining it, along with any limits there might be in your ability to guarantee it.

If the whistleblower is public in his/her disclosures, having the unwavering support of the congregation goes a long way in helping the whistleblower and their family feel nurtured and safe at a stressful and tumultuous time. It is why Bearing Witness is targeted not only to clergy and faith leaders, but faith communities as well.

As always, encourage whistleblowers to reach out to an experienced lawyer for expert support. In addition to analyzing rights, risks and strategies to maximize effective and safe disclosure, a lawyer can help issue warnings to an employer of zero tolerance for retaliation and also potentially protect witnesses who might support the whistleblower's claims.

BEST PRACTICES FOR WHISTLEBLOWERS

- Consult your loved ones.
- Seek legal advice early from a Government Accountability Project lawyer or attorney specializing in whistleblower law.
- Maintain an ongoing and detailed written record of all events involved in your disclosure.
- Consider working within internal channels if it will be effective, but do not let yourself be perceived as a threat to your colleagues and employer.
- Test the waters with work colleagues and attempt to garner their support if possible.
- Identify potential allies, such as elected officials, journalists, agency staff, advocacy groups and faith leaders.
- Don't communicate with external allies during work hours or while using office equipment.
- Use secure communication tools, like WhatsApp or Signal, to connect with external allies.

LEARN MORE ABOUT GOVERNMENT ACCOUNTABILITY PROJECT'S DEMOCRACY PROTECTION INITIATIVE: BEARING WITNESS

WEBSITE: <http://democracy.whistleblower.org>

EMAIL: democracy@whistleblower.org

If you have a whistleblower disclosure or would like assistance from Government Accountability Project, please complete our intake form or call our office at (202) 457-0034. All information submitted to Government Accountability Project through this secure form is strictly confidential and your anonymity will be protected.

As a nonprofit with limited resources, Government Accountability Project unfortunately isn't able to offer formal legal representation for every whistleblower. They review all requests for support and if they are not able to take it on, will offer strategic advice or referrals to other agencies, organizations, or lawyers that may be able to help.

Please note: The information in this brief guide is not comprehensive and should not be construed as offering legal advice. Please contact Government Accountability Project's Democracy Protection Initiative or another attorney experienced in whistleblower law for specific guidance about rights, risks, and options.

Any contact with a Government Accountability Project team member, or Government Accountability Project's consideration of your case, does NOT constitute our agreement to represent you, unless an authorized staff member has explicitly stated so in writing.

