

Grassley Remarks on National Whistleblower Appreciation Day

Jul 30, 2015

**Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
On National Whistleblower Appreciation Day
July 30, 2015**

I am honored to share the podium with so many friends like Fred [Whitehurst], and my colleagues on the Whistleblower Protection Caucus. I'm also very happy to join them in showing my appreciation for whistleblowers. Whistleblowers often don't get much appreciation or hear many kind words. In fact, Whistleblowers are called all sorts of things. Trust me, I've heard them all.

A lot of folks dismiss whistleblowers for not being "team players." They won't just "go along to get along." They're called disgruntled, selfish, insubordinate, and disrespectful of authority and the chain of command.

Critics throw around these words as if they automatically undermine a whistleblower's claim. Well, it doesn't take a rocket scientist—or even a lawyer—to see how short-sighted that is. The folks pointing fingers at whistleblowers are often the ones responsible for the wrongdoing whistleblowers report.

They are also the most likely sources of retaliation.

We passed the Whistleblower Protection Act over a quarter of a century ago, and employers still use all kinds of tricks to retaliate against whistleblowers.

Managers drum up bogus retaliatory investigations against whistleblowers, demote them, fire them, and ruin their reputations. Some of the latest tricks are pretty sneaky. My Committee is investigating the FBI's use of Loss of Effectiveness orders to retaliate against employees who report sex discrimination.

Before my Committee investigated these orders, the FBI kept them secret from employees, and employees had no opportunity to appeal them.

U.S. Marshals Service whistleblowers tell me that managers threaten to use the Freedom of Information Act to learn who has reported wrongdoing or talked to the Inspector General. Then they retaliate against those whistleblowers. This behavior creates an environment of fear, it chills protected speech, and it perverts the Freedom of Information Act.

However, experience shows us that silencing whistleblowers just allows wrongdoing to fester and spread.

By pointing out problems, whistleblowers foster transparency and make it possible for their organizations to do better. After all, you can't fix something if you don't know it's broken. That's just common sense.

Many whistleblowers bravely report their concerns internally to their supervisors before they even think of themselves as whistleblowers. They expect that their organization will take corrective action. But many employers don't listen. Then they discover they could have saved a lot of time, money, and embarrassment by taking a whistleblower seriously.

Fred Whitehurst's case is a great example. In the 1990s, Fred wrote hundreds of letters reporting serious flaws in forensic analysis at the FBI Crime Lab. He was subjected to personal attacks, retaliatory investigations, and suspension. But a 1997 Inspector General Report validated his claims. The report said that examiners did shoddy work that led to inaccurate testimony in criminal cases. Then the FBI and Justice Department failed to adequately review the examiners' flawed analysis or inform defendants of evidence that could clear their names. According to the Inspector General, that failure led to "irreversible harm" for many defendants.

Twenty years after Fred first blew the whistle, the agency finally admitted its mistakes. According to the FBI, the examiners gave flawed testimony about 90 percent of the time, including in death penalty cases. This is what happens when organizations treat whistleblowers as liabilities instead of assets.

Experience also shows us that we need to protect whistleblowers who use lawful external channels to report waste, fraud, and abuse. One example of this is the False Claims Act. Before I co-authored amendments to the Act in 1986, much of the outrageous fraud in government contracting went undetected and unprosecuted. Since the amendments, which empowered and protected whistleblowers, false claims suits have recouped over 40 billion dollars in taxpayer funds.

Another example is congressional oversight. Whistleblowers help Congress ensure the laws we pass work the way they are supposed to. Without whistleblowers, we might never have known about gun walking in Operation Fast and Furious, the mismanagement of the juvenile justice programs, or the misuse of the EB-5 investor visa program. Whistleblower disclosures like these help bring greater transparency, better legislation and better government.

No one can dispute that we need whistleblowers. So why do I still get calls every day with fresh stories about reprisals for reporting wrongdoing? Part of the problem is that there is still much legislative work to be done.

For example, the law does not protect FBI whistleblowers who report wrongdoing to their supervisors. These are things that Congress can work on.

Unfortunately, no amount of legislation will change a culture that punishes whistleblowers. To be effective, laws have to be enforced, and wrongdoers have to be held accountable. With their words and actions, leaders have to make clear that whistleblowers are important and retaliation is not tolerated.

For many years I've asked the President of the United States to have a Rose Garden ceremony honoring whistleblowers. After all, the tone at the top is critical. The President has never taken my suggestion. However, my colleagues in the Senate have joined me in setting the right tone here in Congress with the Whistleblower Protection Caucus. It has 12 members, with an equal number from each side of the aisle. Whatever their party affiliation, my colleagues on the Caucus agree with me that whistleblowers should be valued, not punished.

That is why I am here today, to show my appreciation. The first whistleblower I ever met, Ernie Fitzgerald, once told me that the only thing whistleblowers are guilty of is "committing truth." Like Ernie, many of you here have risked your career, your personal well-being, and your reputation by "committing truth." You have shined a light on fraud and unlawful activity, saved taxpayer money, and helped us in Congress write better laws. You have made a difference.

Thank you.