

[The Washington Post](#)**National Security**

Trump's rhetoric will have a chilling effect on whistleblowing, legal experts say

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It's tough to be a whistleblower any day — but especially today, when the moment's most prominent one hasn't even been publicly identified, yet has already been ridiculed by the president of the United States and the country's most-watched cable news network.

The intelligence official who lodged a complaint about President Trump's conversation with a foreign leader is “a partisan person” carrying out a “political hack job,” Trump [said](#) from the Oval Office on Friday, offering no evidence and saying he didn't know the person's identity.

The whistleblower is “a punk, a punk who's snitching out the president's phone calls to a foreign leader,” [said](#) Fox News correspondent Geraldo Rivera on Friday's episode of “Fox & Friends,” adding that the person is one of “these, you know, deep state people.”

The phone call at the center of the extraordinary complaint involved Trump's pressing the leader of Ukraine to investigate the son of former vice president Joe Biden, two people familiar with the matter [told](#) The Washington Post this week.

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But it’s not just the contents of the conversation that experts are worried about; it’s the knee-jerk reaction by the White House and conservative media casting the whistleblower as politically motivated and potentially traitorous — baseless allegations that many feel will have a chilling effect on other government employees thinking of speaking out about fraud, corruption and other wrongdoing.

“I’m extraordinarily concerned about the impact of how this complaint was handled,” said Jason Zuckerman, a lawyer who has represented whistleblowers in the public and private sectors and who served in the Office of Special Counsel during the Obama administration.

“Any federal employee who hears the reaction from the White House will think, ‘If I blow the whistle, I will likely be subject to a personal attack,’ ” he

said. “No one wants to ruin their reputation, but we depend on federal employees to blow the whistle on waste, fraud and abuse.”

Top Democrats on House oversight committees agreed, criticizing Trump in a joint statement.

“The President’s brazen effort to intimidate this whistleblower risks a chilling effect on future whistleblowers, with grave consequences for our democracy and national security,” said Reps. Adam B. Schiff (Calif.), Elijah E. Cummings (Md.), Jerrold Nadler (N.Y.) and Eliot L. Engel (N.Y.).

Legal protections for government employees seeking to report wrongdoing date back more than 240 years to the Continental Congress, and they’ve been rewritten many times since. But these revisions still do not go far enough to protect employees’ rights, said David Colapinto, the general counsel at the nonprofit National Whistleblower Center.

Today, [the Whistleblower Protection Act](#) and the [Intelligence Community Whistleblower Protection Act](#) are the primary statutes outlining public employees’ rights to speak out about misconduct.

All government employees can safely disclose violations of laws or regulations, waste or mismanagement, abuse of authority and dangers to public health and safety, but *how* you can report that depends on where you work.

If you work in the intelligence community, where the information at hand is usually sensitive or secret, your rights are more limited, Colapinto said. You can blow the whistle up the chain of command and to your agency's inspector general, but you're rarely permitted to go beyond that.

The only exception is if an official lodges a complaint and the inspector general of the intelligence community determines it to be credible and troubling enough to be considered a matter of "urgent concern" — which happened with the grievance about Trump's communication with a foreign leader, believed to be the new president of Ukraine. That ruling is supposed to trigger notification of congressional oversight committees.

But in this case, acting director of national intelligence Joseph Maguire has refused to share details about Trump's alleged transgression with lawmakers. Colapinto called this move unprecedented and said it could further erode trust in the intelligence community.

“The system of whistleblowing will fail in the intelligence community if that complaint is not transmitted to Congress,” he said. “To have a whistleblower complaint verified as credible and urgent and not end up where it's supposed to go would be the worst possible outcome. There would be a crisis in confidence in the intelligence community.”

Regular civil service employees have [more options](#), Zuckerman said.

They can report wrongdoing directly to congressional oversight committees and to the news media — as long as they do not leak classified information — in addition to blowing the whistle to their agencies' inspectors general or to the Office of Special Counsel.

In the case of the complaint against Trump, outrage has fallen along party lines, but protections for whistleblowers have traditionally received bipartisan support. Even so, retaliation for reports of wrongdoing remains common. In a 2010 government [survey](#), more than a third of respondents who were identified as sources of complaints said they faced threats or reprisals — or both.

One reason for this lingering problem is the Merit Systems Protection Board, said Mandy Smithberger, the director of the nonpartisan Project on Government Oversight's Center for Defense Information. The agency adjudicates alleged reprisals against whistleblowers, but the Senate [has yet to fill its three seats](#). It's been [empty](#) for a half-year, and its backlog of cases is piling up.

But even when the agency was handling disputes, it rarely sided with whistleblowers, Smithberger said, and intelligence officials do not have

access to the court. Advocates have instead pushed for jury trials, which they say will lead to more-equitable and just verdicts.

Instead of relying on a legal framework for protection against retaliation, Smithberger said potential whistleblowers should proceed carefully: Gather as much documentation as possible, get legal advice and try to remain anonymous.

“One has to go in with the assumption that it’s career suicide,” she said.

“Talk to your family before you blow the whistle, because you’re making a big decision you can’t take back. You’re doing it at a great personal risk.”

Smithberger’s organization even offers [an online manual](#), “Caught Between Conscience and Career: Expose abuse without exposing your identity.” (“If you are a government whistleblower,” she advised, “I would recommend you don’t download it [the manual] from your government computer.”)

Trump’s rhetoric is dangerous, she said, but the climate for whistleblowers is already one of intense fear.

“I think it will have a chilling effect,” Smithberger said, “but it’s already

Siberia.”

However, the legal and political dispute does provide lawmakers an opportunity to change that — to show whistleblowers that their complaints are valued.

“This is really a moment when the spotlight is on Congress to show government employees they’re going to take their concerns seriously and act on them responsibly, and not just play politics,” Smithberger added. “If this person gets fired, are they going to fight to get them reinstated when this story isn’t on the front page anymore?”

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