

# 'Horrific and chilling': Whistleblower advocates complain as Trump tries to identify source of Ukraine complaint

**Bart Jansen and Kevin Johnson, USA TODAY** Published 5:16 p.m. ET Sept. 30, 2019 | Updated 12:18 p.m. ET Oct. 1, 2019

WASHINGTON – After [President Donald Trump said Monday he is trying to find out who reported concerns about his Ukraine phone call](https://www.usatoday.com/story/news/politics/2019/09/30/donald-trump-trying-find-out-who-ukraine-whistleblower/3822241002/) ([/story/news/politics/2019/09/30/donald-trump-trying-find-out-who-ukraine-whistleblower/3822241002/](https://www.usatoday.com/story/news/politics/2019/09/30/donald-trump-trying-find-out-who-ukraine-whistleblower/3822241002/)), whistleblower advocates said that person must be protected from retaliation and should be allowed to remain anonymous.

Trump told reporters in the Oval Office on Monday that “we’re trying to find out ” who the whistleblower is. He reiterated that his July 25 call to Ukraine President Volodymyr Zelensky was “perfect,” despite [asking his counterpart to investigate his political rival](https://www.usatoday.com/story/news/politics/2019/09/22/donald-trump-joe-biden-ukraine-whistleblower-standoff-explained/2388648001/) ([/story/news/politics/2019/09/22/donald-trump-joe-biden-ukraine-whistleblower-standoff-explained/2388648001/](https://www.usatoday.com/story/news/politics/2019/09/22/donald-trump-joe-biden-ukraine-whistleblower-standoff-explained/2388648001/)), former Vice President Joe Biden. On Thursday, [Trump was recorded telling a group that the whistleblower should be punished](https://www.usatoday.com/story/news/politics/2019/09/26/whistleblower-donald-trump-says-source-complaint-almost-spy/2441808001/) ([/story/news/politics/2019/09/26/whistleblower-donald-trump-says-source-complaint-almost-spy/2441808001/](https://www.usatoday.com/story/news/politics/2019/09/26/whistleblower-donald-trump-says-source-complaint-almost-spy/2441808001/)), noting that “spies and treason” in the past were handled “a little differently than we do now.”

Mandy Smithberger, director of the Center for Defense Information at the Project on Government Oversight, called Trump’s apparent desire to unmask the whistleblower “horrific and chilling.”

“It’s the last thing a president should be doing if he really wanted to root out waste, fraud and abuse,” she said.

Andrew Bakaj, a former CIA officer who is representing the whistleblower, tweeted Monday that the person “is entitled to anonymity. Law and policy support this and the individual is not to be retaliated against. Doing so is a violation of federal law.”

**Updates on impeachment:** [Whistleblower to testify, lawyers' safety concerns and Trump tweets](https://www.usatoday.com/story/news/politics/2019/09/30/impeachment-whistleblower-set-testify-and-what-you-need-know/3819910002/) ([/story/news/politics/2019/09/30/impeachment-whistleblower-set-testify-and-what-you-need-know/3819910002/](https://www.usatoday.com/story/news/politics/2019/09/30/impeachment-whistleblower-set-testify-and-what-you-need-know/3819910002/))

John Kostyack, executive director of the National Whistleblower Center, said “threats of reprisals by the president and his allies against the intelligence community whistleblower are contrary to our nation’s core ideal of freedom of speech.”

“If we want to know about lawbreaking, we need to gather evidence from the people who have it,” Kostyack said. “Any time we send a message that they are going to be punished, we are essentially discouraging people who have this evidence from stepping forward. We need them. We need whistleblowers.”



President Donald Trump speaks to reporters after participating in the ceremonial swearing-in of Gene Scalia as the Secretary of Labor at the White House in Washington, D.C., on Sept. 30, 2019. (Photo: Chris Kleponis / POOL, EPA-EFE)

The whistleblower's complaint is at the heart of the impeachment investigation of Trump at the House of Representatives. The complaint was filed Aug. 12 with the inspector general for the intelligence community, Michael Atkinson. [The complaint \(/story/news/politics/2019/09/26/whistleblower-trump-used-power-office-get-ukraine-smear-biden/3772915002/\)](#) reported the "urgent concern" that alleged Trump was abusing the power of his office to urge Ukraine to gather dirt on Biden.

**More:** [Whistleblower says Trump used 'the power of his office' to solicit foreign help to discredit Joe Biden \(/story/news/politics/2019/09/26/whistleblower-trump-used-power-office-get-ukraine-smear-biden/3772915002/\)](#)

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An advertisement for Hershey's Syrup. The background is teal. On the left, the text "this changes everything." is written in a large, white, serif font. On the right is a bottle of Hershey's Syrup. The label on the bottle says "HERSHEY'S SYRUP" and "GENUINE CHOCOLATE FLAVOR". Below the text is a small image of a chocolate syrup being poured into a glass. At the bottom left of the advertisement, there is a dark red button with the text "BUY NOW" in white.

**More:** [What's going on with Trump and Ukraine? And how does it involve Biden and a whistleblower complaint? \(/story/news/politics/2019/09/22/donald-trump-joe-biden-ukraine-whistleblower-standoff-explained/2388648001/\)](https://www.usatoday.com/story/news/politics/2019/09/22/donald-trump-joe-biden-ukraine-whistleblower-standoff-explained/2388648001/)

## How are whistleblowers protected?

While Smithberger said whistleblowers do enjoy protections, they are not always absolute.

Revealing the identity of a complainant can be a crime if that person, for example, has served in certain covert intelligence roles. The law, however, does not extend to non-covert officers, Smithberger said.

A 2012 policy directive issued by the Obama administration protects whistleblowers from revocation of any security clearance they may hold. The protection is not codified in law, Smithberger said, and could be rolled back by another administration.

If a person were fired in retaliation for making a whistleblower complaint, Smithberger said a complainant has the right to appeal the action through the agency's inspector general. An inspector general may recommend restoration of the job, but the recommendation is not necessarily binding, she said.

David Iglesias, a former U.S. Attorney for New Mexico who is now an associate professor of politics and law at Wheaton College in Illinois, said the goal of whistleblower protection laws is to protect them from intimidation and retaliation.

"What he's doing comes very close to witness tampering," Iglesias said of Trump. "You got a president of the United States seeking a meeting with the whistleblower — that in and of itself smacks of intimidation."

Iglesias said federal law prohibits witness tampering, including "whoever intentionally harasses another person and thereby hinders, delays, prevents or dissuades any person from attending or testifying in an official proceeding."

"Here's the problem: the law was written assuming that people in office below the president would be potentially violating whistleblower rights," Iglesias said. "This is uncharted waters in terms of the president potentially witness tampering or attempting to influence."

**More:** [Donald Trump: 'We're trying to find out' the identity of whistleblower who made Ukraine complaint \(/story/news/politics/2019/09/30/donald-trump-trying-find-out-who-ukraine-whistleblower/3822241002/\)](https://www.usatoday.com/story/news/politics/2019/09/30/donald-trump-trying-find-out-who-ukraine-whistleblower/3822241002/)

Bradley Moss, a national-security lawyer who isn't representing Trump's whistleblower, said protections for people in the intelligence community are limited and confined to administrative procedures, such as if they lost their security clearance in an act of retaliation.

"No one knows whether those provisions could be successfully and lawfully applied when the president himself orders the retaliation," he said.

Jesselyn Radack, who heads the Whistleblower and Source Protection Program at ExposeFacts, said anonymity is the "backbone" of all whistleblower laws.

"What anonymity does is strip away that tendency to shoot the messenger rather than listen to the message," said Radack, whose clients include Edward Snowden, Chelsea Manning and Thomas Drake.

Radack said the Ukraine whistleblower revealed a flaw in how the Intelligence Community Whistleblower Protection Act because the accused wrongdoer – Trump – inserted himself into the process.

"What we're seeing is basically a system failure – a glitch – where suddenly the accused wrongdoer is trying to insert himself into the process," she said of the president.

Kostyack urged members of both parties of Congress to affirm that the "whistleblower deserves the highest level of protection from retaliation, including the ability to maintain anonymity."

## What has happened so far

News reports about Trump's call with the Ukrainian president prompted [House Speaker Nancy Pelosi, D-Calif. \(/story/news/politics/2019/09/29/donald-trump-v-nancy-pelosi-impeachment-showdown-test-nation/3803424002/\)](https://www.usatoday.com/story/news/politics/2019/09/29/donald-trump-v-nancy-pelosi-impeachment-showdown-test-nation/3803424002/), to launch the impeachment inquiry on Tuesday.

Acting Director of National Intelligence, Joseph Maguire, and the Justice Department initially withheld the report from Congress because of concerns about executive privilege and that the target – Trump – isn't a member of the intelligence community. But on Wednesday, Trump released a [five-page memo summarizing the call \(/story/news/politics/2019/09/25/trump-releases-transcript-call-ukraine-president/2438300001/\)](https://www.usatoday.com/story/news/politics/2019/09/25/trump-releases-transcript-call-ukraine-president/2438300001/) and gave the [nine-page whistleblower complaint \(/story/news/politics/2019/09/26/whistleblower-complaint-against-trump-read-full-declassified-document/3773047002/\)](https://www.usatoday.com/story/news/politics/2019/09/26/whistleblower-complaint-against-trump-read-full-declassified-document/3773047002/) to the House and Senate intelligence committees.

The House and Senate intelligence committees still want the whistleblower to testify. Bakaj cited a federal statute that said once the inspector general deems a complaint credible, which Atkinson did in this case, that the whistleblower can contact congressional committees under guidance from the director of national intelligence.

The House intelligence committee chairman, Rep. Adam Schiff, D-Calif., said Thursday the committees were still working to get security clearances for the whistleblower's lawyers, to allow the testimony.

Stephen M. Kohn, the center's board chairman and author of the "Whistleblower Handbook," said the Continental Congress passed the first whistleblower law in 1778 that declared "anyone in the service of the U.S. with knowledge of serious wrongdoing has a duty to deliver that information to Congress as soon as possible."

*Contributing: Ledyard King and Courtney Subramanian*

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