

Whistleblower Rights as a Cornerstone for Judicial Accountability

by:

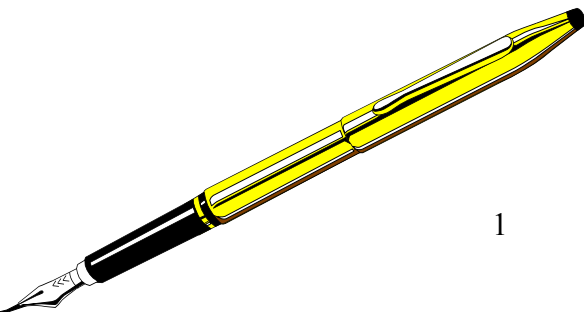
Zena D. Crenshaw and Tom Devine

The American Whistleblowers' League (AWL) is a project of National Judicial Conduct and Disability Law Project, Inc. (NJCDLP), a nonprofit organization combating abuses of the American legal system that are facilitated by judicial misconduct [see: www.government-insiders-forum.org] NJCDLP essentially united with primarily executive branch whistleblowers through AWL given the many legal decisions rendering their statutory rights virtually meaningless. Federal employees seeking protection from retaliation have an awful 1-122 win/loss record in the Federal Circuit Court of Appeals. Such trends alert NJCDLP directors and officers to the prospect of judicial misconduct as well as the more popular concept of "judicial activism".

By 2004, even mainstream media suggested the manifestation of personal biases by judges could amount to judicial misconduct. The sagas of lone, disgruntled litigants accordingly evolved into law review articles such as "*Self-Regulation of Judicial Misconduct Could Be Mis-Regulation*", 89 Michigan Law Review 609 (1990); internet commentaries such as "*Thoughts on the Law Addressing Bad Federal Judges: Self-Policing Isn't Working, But Is There a Good Alternative?*", Find Law's Legal Commentary, August 13, 2004 by former White House advisor John Dean; as well as newspaper articles such as "*When Judges Investigate Judges*", June 3, 2004, *Chicago Tribune* by Northwestern University School of Law Professor Steven Lubet. In fact, "(t)wo years ago, (House Judiciary Chairman F. James Sensenbrenner) expressed (his) concerns before the U.S. Judicial Conference regarding the Judicial Branch's lack of effort in recent years to police its Members' behavior." Yet at present, America's grassroots, legal/judicial reform movement seems to flounder more than ever.

Empowered by the internet, hundreds of thousands if not millions began rallying on-line for judicial accountability in about the year 2000. Despite their protests, petition drives, letters to Congress and the like, it appears these activists rarely accomplish the meaningful change their numbers should command. Many among them contend their initiatives must be massive to be effective. However, few help build that kind of momentum through the substantial support of any related project.

Perhaps the collective strength to contain judicial misconduct hinges on more than considerations of size. A relatively small group of good government advocates revolutionized the rights of executive branch whistleblowers. Their interest in preserving and expanding those rights is the foundation of a natural partnership with legal/judicial reform activists. Embraced, that relationship would imbue the latter with decades of experience, advances, and clout that their actual and potential numbers immediately magnify. Whistleblower rights could make a difference more than in any other context as a cornerstone for challenging the last, most significant accountability gap in the U.S. government: the judiciary. Sharing lessons learned from past campaigns about the natural cycles for change and the best strategic tactics is Tom Devine, co-founder and Legal Director of the renown Government Accountability Project [see: www.whistleblower.org] as well as Policy Advisor to AWL.





The last 28 years have seen a revolution in whistleblower rights — freedom of speech where it counts by challenging abuses of power that betray the public trust. But every battle won by individual whistleblowers, or by coalitions to win them rights generically, appeared rationally hopeless for nearly the entire struggle — until we won. It was that way with David and Goliath, too, or with the American Revolution, or with so many paradigm shifts that have changed the course of history. The Government Accountability Project (GAP) beat its head against the congressional wall for 15 years, until during a five month campaign Congress adopted the strongest rights ever as part of the Sarbanes Oxley law.

Here's an overview of tactics to make a difference through and for whistleblowers. Every successful campaign has the same foundation: relationships based on earned trust. The four cornerstones to build around are stamina, expertise, credibility, and solidarity. And the guiding dynamic for everything created is the capacity to turn knowledge into power. If these basic principles are honored, there is nothing more powerful than the truth. Let's illustrate the work underlying those principles to the process of managing a credible legislative campaign to obtain rights for judicial whistleblowers, drawing on tactics that have worked in other contexts.

The first step is doing our homework from the public record. Legislators generally are afraid to do anything that appears totally new. But almost nothing is, and there are deeper roots for judicial whistleblowing than generally recognized. Completing all relevant research is a good way to reassure legislators and staff worried that they'll look like kooks. For example, since the 1980's GAP has helped to win precedents for administrative staff against judges who violated their constitutional rights on the job. From another angle, the model whistleblower protection law to implement the Inter-American Convention Against Corruption includes protection for judicial whistleblowers. Indirect principles of accountability are relevant, too. In many jurisdictions judges are elected. The public's right to make informed election choices may depend on free speech rights for staff to expose abuses of power behind closed judicial doors.

The second step is building a record from whistleblowers. That means thoroughly gathering the stories of those who have witnessed judicial corruption and other abuses, and then packaging each person's knowledge in a brief, one to two page summary accessible for anyone capable of understanding Reader's Digest. Theses anecdotes illustrate the potential for freedom of speech to fuel informed oversight, and everyone naturally pays more attention to human interest stories than good government lectures. GAP's legislative page on the organization website, www.whistleblower.org, has examples that might be helpful.

The third step is getting to know the staff at legislative gatekeeper offices like committee chairs, and earning their trust. That means convincing staff that you're a resource for their boss the politician. They don't even have to agree with your ideas to view you that way. These staff's jobs are to make sure their bosses aren't caught by surprise, and can sound like they know what they're talking about after a five minute cram briefing. If the staffers trust you to provide timely, accurate information, they'll want to cultivate a working relationship with you, so they can do a good job of keeping their bosses a step ahead of developments. And coming out of those relationships, you can recruit the pioneer sponsors for legislation, to prepare discussion drafts and introduce the first version of a bill. Of course there are drastic exceptions, but as a rule you'll have more impact on wording of the final law by influencing the initial discussion draft stage than any other step of the process.

The fourth cornerstone is the most significant — solidarity, solidarity, solidarity! In the absence of a miracle, those who are isolated will lose. To turn your earned trust and knowledge into power, you have to be speaking for a constituency large and engaged enough that it must be taken seriously. Solidarity must come from whistleblowers serving as the public's eyes and ears. The American Whistleblowers League can then get the information out to the public who should be benefitting from that eyewitness knowledge, as well as legislative offices. But solidarity must be a two-way street, also coming from those same public constituencies whose combined political power is the key to winning whistleblower rights for otherwise isolated dissenters.

Perhaps most significant for the Speak up Campaign, the solidarity must operate in both directions with organizations supporting whistleblowers in other contexts. They are natural kindred spirits, and there is no excuse for both camps not to actively help each other. Champions for national security and other whistleblowers are in the climax of a six year campaign to restore freedom of speech within government bureaucracies. Reinforcement from judicial accountability advocates could put that effort over the top. On the other hand, this already well-established existing whistleblower rights coalition could give judicial accountability advocates a head start on Capitol Hill and among major media outlets.

Zena D. Crenshaw is Executive Director of National Judicial Conduct and Disability Law Project, Inc. and The American Whistleblowers' League (AWL). AWL is a nonpartisan coalition of local, state, and federal government whistleblowers on alleged executive, legislative, and judicial misconduct. It emerged to more centralize the work of government whistleblowers across America which includes lobbying of various legislatures to establish or enhance their statutory rights, litigating to enforce them, and publicizing the underlying government misconduct.

Tom Devine serves as AWL's Major Initiatives Spokesperson and Policy Advisor. He is Legal Director for the Government Accountability Project (GAP), America's premier advocate for federal government whistleblowers. Tom brings to AWL his encyclopedic knowledge of federal whistleblower legislation which he has advanced before Congress, quasi-judicial agencies, various courts, and the media for nearly three decades.

###