

Opinion

# We Need More Government Whistle-Blowers

New York City requires its employees to report corruption. It has worked.

**By Margaret Garnett and Preet Bharara**

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Erin Schaff/The New York Times

Over the past few weeks, the country has been riveted by the news of a whistle-blower within the intelligence community who filed a formal complaint alleging wrongdoing by President Trump. In turn, we have watched the whistle-blower defamed by the president and his allies, even accused of treason, despite meticulously following the lawful process to report possible criminal conduct. This took remarkable courage. There was no legal obligation to report it, and serious risks to career, reputation and even personal safety for doing so.

We know from the work we did as prosecutors and investigators that whistle-blowers are essential to exposing corruption and holding the corrupt accountable. But with few exceptions, the law imposes no general obligation on citizens to report criminal activity to authorities. A “duty to report” is rare in American law. Mostly you may simply avert your eyes, keep your mouth shut and suffer no consequence. The rare exceptions concern particularly vulnerable populations like children, which is why teachers, doctors and other caregivers have a legal obligation to report credible evidence of child abuse.

As with child abuse, public corruption happens in the shadows and is notoriously difficult to uncover, investigate and prosecute. In our experience, uncovering such behavior and holding public officials accountable depends on fellow public servants blowing the whistle. The broader culture can encourage this. But as we have seen in the past three years, norms and unwritten rules about conduct in public life — even those that once seemed immutable — are only as durable as the people who choose to live, or not live, by them. That’s a weak foundation for guarding against breaches of the public trust.

Now consider a system in which there is an obligation to report corruption, to point a finger at waste, fraud and abuse. You don’t have to imagine it, because New York City government imposes an uncommon obligation on public servants, requiring them to report wrongdoing or jeopardize their jobs and professional advancement if they do not.

The city has a long and storied history of public corruption scandals. But out of that history grew this unusual and effective rule for combating corruption. An executive order, first issued by Mayor Ed Koch in 1978 and ratified by every mayor since, directs that all New York City employees have an obligation to report to the city’s independent Department of Investigation any instance of corruption, waste, fraud or abuse by public officials or city contractors. Failure to report can be cause for discipline or termination. The law arose after scandals within city government went unchecked, despite city employees’ having knowledge of the corruption that fueled them. All city employees now receive regular anti-corruption training from the D.O.I., which underscores the obligation to report wrongdoing as well as the legal protections they have when they do report.

New York City is far from perfect, but this distinctive rule has borne extraordinary fruit. Many of the most significant criminal cases that the D.O.I. has investigated began with, or were greatly enhanced by, information reported by city employees or contractors — including cases prosecuted by the United States Attorney’s Office for the Southern District of New York during our time there. These include the [CityTime scandal](#), in which executives at Science Applications International Corporation bilked New York City out of half a billion dollars, and the sweeping investigation into day care providers known as [Operation Pay Care](#), which exposed a million-dollar fraud and resulted in the convictions of 15 people, including seven city employees. New York City’s duty to report has helped law enforcement expose corrupt public officials and those who seek to corrupt them.

A duty to report may at first seem to only add to the dilemma facing a would-be whistleblower, but that duty, combined with protections for those who act on it, creates a kind of virtuous cycle. A statutory duty normalizes the reporting of wrongdoing and lessens the stigma of doing so. Rules can operate to shape culture, not just punish, and a culture in which the rules are well known supports their efficacy and makes compliance easier. It would be ideal if all government employees had the courage to voluntarily report wrongdoing. And an ethical culture can certainly help make such reporting more likely. But New York City's experience shows that we need not rely solely on personal bravery, or on changing people's hearts, to have effective systems that can alert us to public corruption and fraud.

Just in the past month, the D.O.I. began two criminal investigations based on calls from city employees who were each offered a bribe. One of the calls emphasized the power behind the mandatory reporting rule. In making the report, the employee noted that he thought the bribe offer might be an "integrity test" by his employer, and he knew that if it was, it would not be enough to save his job to simply decline the bribe, as he did, but that to pass the test, he was also required to notify D.O.I. of the attempted bribe. One might hope that all public employees would be offended by the offer of a bribe and would report such conduct. But moral impulses are not always enough to combat corruption, and the calculus becomes markedly harder when the wrongdoing is not as stark as a bribe and the wrongdoer is not a stranger but a trusted colleague or an influential supervisor or a powerful elected official.

Insiders willing to report wrongdoing are vital to the fight against public corruption. It takes fortitude to come forward, even when you are required to do so. Those of us who believe in the promise and ideal of honest self-government have an obligation to support a process for whistle-blowers that helps diminish the amount of bravery and self-sacrifice required. The lesson of New York City's experience is that mandated reporting can work. It has contributed tremendously to changing the culture on child abuse, and in New York City it has exposed public corruption while making investigating and prosecuting it easier. Whatever the outcome of the current impeachment inquiry, it should begin a conversation about how to encourage government whistle-blowers to come forward, just as the aftermath of the Watergate scandal was the impetus for institutional reforms and safeguards. A duty to report deserves a place in that conversation.

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