



www.whistleblower.org

Working with Whistleblowers: A Training for Low-Wage Worker Advocates

June 6, 2018

Dana L. Gold, Esq.

Director of Education, Government Accountability Project



The Government Accountability Project (GAP) is the nation's leading whistleblower advocacy organization. Founded in 1977, GAP is a nonprofit public interest organization that promotes government and corporate accountability by advancing occupational free speech, defending whistleblowers, and empowering citizen activists.

What is a Whistleblower?

Common/Amalgam Legal Definition

An **employee** who discloses either **internally** (to managers, hotlines, ethics officers, etc) or **externally** (to agencies, Congress, investigative bodies, the press) information that they **reasonably believe** evidences:

- a violation of law, rule, or regulation
 - gross mismanagement
 - a gross waste of funds
 - an abuse of authority
- or*
- a substantial and specific danger to public health or safety

Food Safety



Kenneth Kendrick
Peanut Corporation of America

Ken Kendrick left his job at Peanut Corporation of America's (PCA) Plainview, Texas, plant in 2006 after his numerous reports of safety and health violations were ignored by both ownership and the Texas Department of Health. When his granddaughter grew ill in late 2008 as a result of a major salmonella outbreak, which had already killed at least nine people and sickened hundreds more, Kendrick gave an exclusive to [Good Morning America](#). He told a harrowing tale of rat feces, water damage and unsafe practices at the Texas plant, belying PCA's defense that a tainted batch of peanut butter from the Georgia plant was an unexpected and isolated event. Kendrick's disclosures prompted one of the largest food recalls in U.S. history, drove passage of the Food Safety Modernization Act and supported the successful criminal prosecution of former PCA executives.

-The Whistleblower Project

<https://www.spj.org/whistleblower/whistleblowers.asp>



Poultry Farming



Craig Watts
Perdue Chicken Farmer

Craig Watts was a chicken farmer who contracted to raise poultry for Perdue. After seeing a Perdue advertisement touting the humane conditions in which its chickens were raised, Watts released a short video revealing the inhumane and dangerous conditions under which Perdue farms contractors were required to raise their chickens. A [New York Times Op-Ed by Nicholas Kristof](#) further detailed Watts' concerns and brought national attention to Perdue's exploitative practices, which resulted in Perdue settling a claim with the Humane Society by agreeing to remove "humanely raised" on its packaging. But Perdue turned on Watts, alleging that Watts rather than Perdue was responsible for the conditions on his farm, and engaged in efforts to intimidate and discredit him through unannounced audits and mandatory retraining. Watts filed a whistleblower claim under the Food Safety Modernization Act, which is on appeal on jurisdictional grounds.

Food Safety/Fraud



Workers at the grocery chain Food Lion revealed shocking abuses of food safety standards that were subsequently featured in a national ABC exposé. After a 10-year battle, GAP's food safety program (before becoming FIC) was able to protect the identity of the whistleblowers involved so they wouldn't face retaliation for speaking up.

- In 1991, Food Lion insiders began reporting to GAP a list of concerns, including that employees were:
- grinding spoiled and expired meat into sausage
- removing expiration dates from out-of-date products
- improperly refrigerating dairy and egg products
- overlooking rodent and bug infestation
- washing off meat that was slimy, greenish and putrid
- soaking poultry in bleach to conceal spoilage
- putting tomato sauce on expired chicken and selling the new product at a higher price

GAP took these concerns to ABC, which aired a national exposé on the confirmed allegations. Afterward, Food Lion's corporate attorneys filed a subpoena demanding confidential whistleblower information that GAP refused to reveal in order to protect the truth-telling employees' identities. For over 10 years, GAP fought the Food Lion subpoena, ultimately prevailing. Meanwhile the company's profits plunged as a result of the exposé, and its stock plummeted to half its previous value, causing it to close 80 stores and to cancel plans to open 80 more.

Immigration Abuses



Cathy Harris
U.S. Customs Service

Cathy Harris, a senior inspector for the U.S. Customs Service at Hartsfield-Jackson Atlanta International Airport, disclosed that African American women were wrongfully targeted for detention and strip searches as possible drug couriers. In fact, only 3 percent of those women were actually carrying drugs, whereas drugs were found on 30 percent of white travelers who were detained and searched. Harris personally observed numerous incidents of black and Hispanic female travelers being body-cavity-searched, illegally detained or restrained for several days and even forced to undergo bowel monitoring. Her disclosures were made public in March 1999 by a Fox 5 investigative news team, which won a Peabody Award for her story. Later, corroboration by a damning Government Accountability Office study of USCS profiling practices prompted federal legislation to reform American customs policies and practices.

-The Whistleblower Project

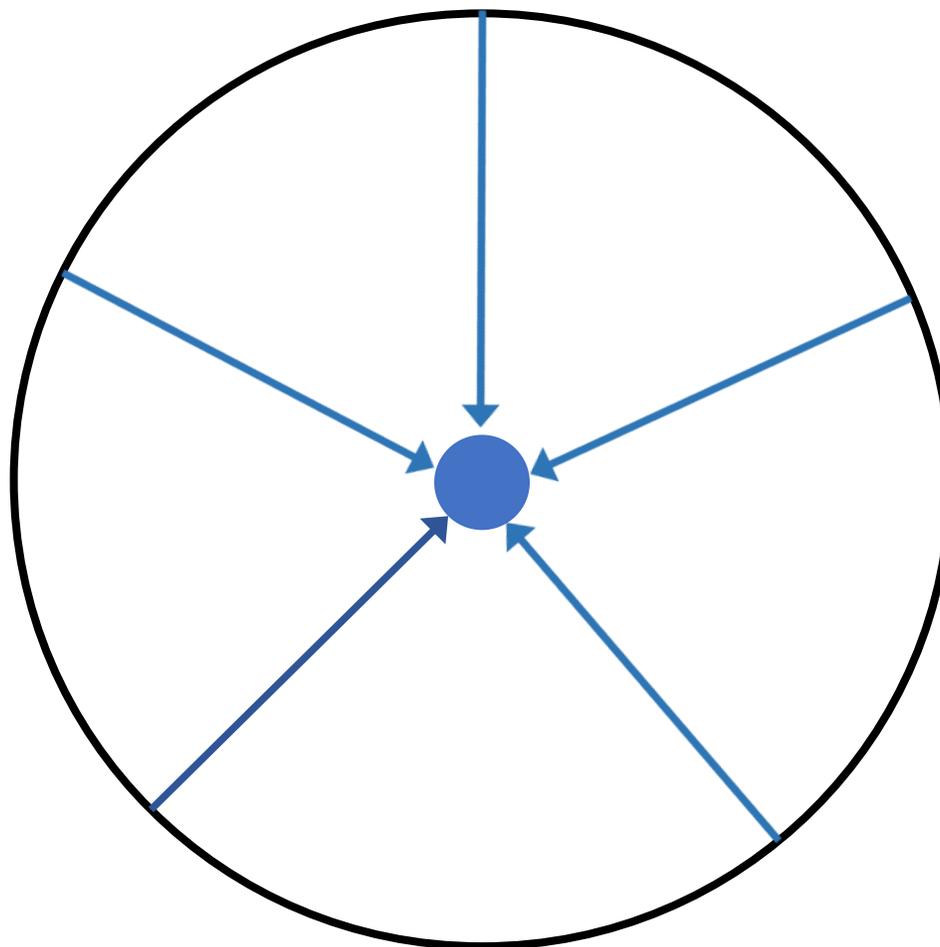
<https://www.spj.org/whistleblower/whistleblowers.asp>

Most Employees Stay Silent.

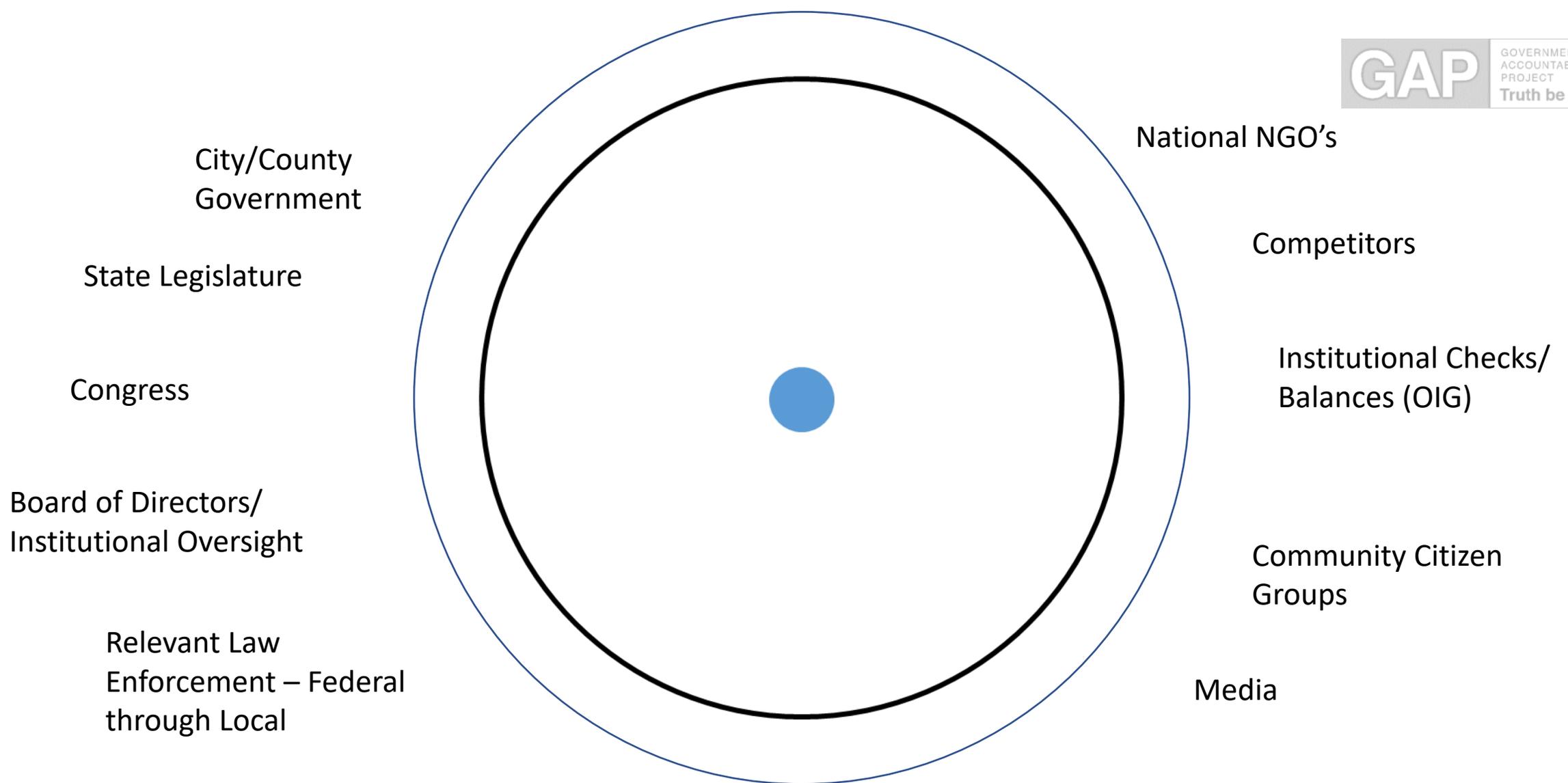
Fear of Reprisal

Fear of Futility

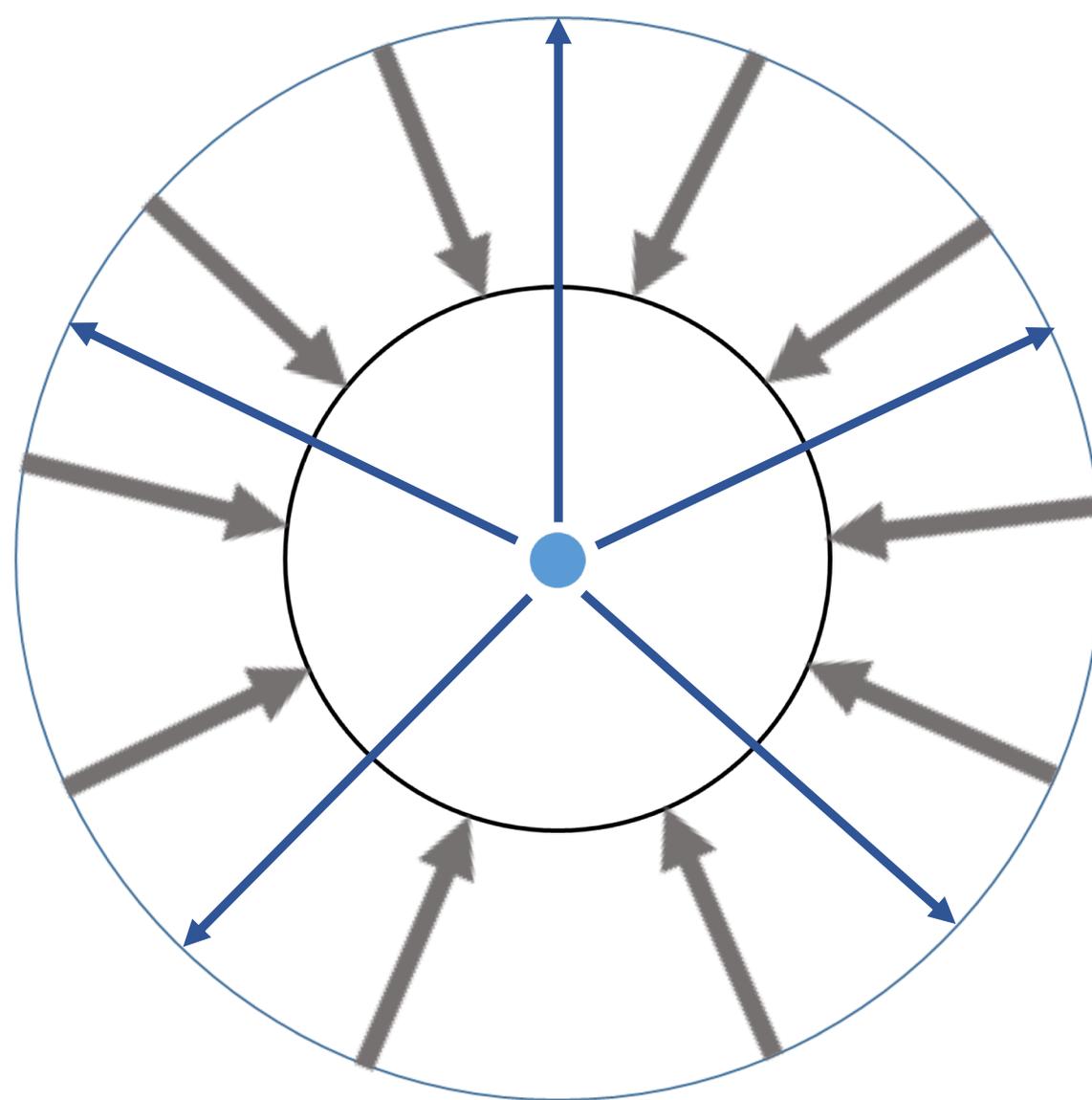
Addressing the Fear of Futility



Typically, a whistleblower is encircled and isolated by traditional bureaucratic institutional employers – corporations, legislatures, and executive agencies – and the disclosed information is filtered or suppressed.



Beyond the bureaucracy are the sources of potential power outside of the institutionalized power holders. These include the media, public interest groups, and consumers – the commonweal.



The challenge is to inform and educate the outer-circle constituencies so that they exert power on the defined traditional power holders – to build information spokes so that the commonweal surrounds and holds the bureaucracy accountable.

Misperceptions of Whistleblowers

blabbermouth
stoolpigeon
canary blabber tattletale
betrayer collaborator snitch
nark stoolie tattler snoop
gossiper snooper spy rat-fink
gossip **WHISTLEBLOWER**
snitcher depththroat rat
fink squealer
notifier informant
telltale talebearer
leaker

WordItOut

Merriam-Webster, Synonyms of "WHISTLE-BLOWER"

(<http://www.merriam-webster.com/thesaurus/whistle%E2%80%93blower>)



Fact: Most whistleblowers do not work in the intelligence community or deal with classified information.



Fact: The majority of employees report problems out of a sense of professional, ethical or legal duty, not out of self-interest or attempted enrichment.

Fact: Most whistleblowers raise concerns internally before going outside of the organization.

97%

of employees report internally first.¹

¹See Ethics Resource Center, "Inside the Mind of a Whistleblower: A Supplemental Report of the 2011 National Business Ethics Survey 4 (2012) (<http://www.ethics.org/nbes/files/reportingFinal.pdf>).

Whistleblower Law: A Patchwork of Protections

Federal Laws: Anti-retaliation schemes (predominantly)

- **Whistleblower Protection Act:** primary law for federal employees
- **Employee protection provisions** in environmental, safety and financial regulations: disclosures in furtherance of purpose of the Acts. Potentially relevant statutes include:
 - Food Safety Modernization Act of 2010, 21 U.S.C. § 399(d)
 - Safe Drinking Water Act, 42 U.S. C. §300j-9(i)
 - Resource Conservation & Recovery Act (covering Solid Waste Disposal Act), 42 U.S.C. § 6971
 - Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S. C § 9610
 - Toxic Substances Control Act, 15 U.S.C. § 2622
 - Clean Air Act,, 42 U.S.C. § 7622
 - Clean Water Act,, 33 U.S.C. § 1367
 - Patient Protection & Affordable Care Act
 - Surface Transportation Act, 49 U.S.C. § 31105
 - Railroad Safety Act, 49 U.S.C. § 20109
 - Airline Safety, 49 U.S.C. § 42121
 - Motor Vehicle Safety Whistleblower Ac, 49 U.S.C. § 30171
 - Consumer Product Safety Act, 15 U.S.C. § 2987
 - Mine Health and Safety Act, 30 US.C. § 815(c)

Patchwork of Legal Protections, cont.

- Federal Laws (continued)
 - **National Defense Authorization Act/Whistleblower Protection for Federal Contractors & Grantees**, 41 U.S.C. § 4712/Public Law 114-261, §1(a)(2), (3)(A)
 - **False Claims Act**, 31 U.S.C. § 3729, §3730(h) (anti-retaliation) (e.g., falsified expiration dates, failure to perform required testing, failure to record illegal discharges of hazardous waste; sale of recalled or defective products)
- State Laws
 - Common law/public policy exception to employment at will doctrine
 - State False Claims Acts
 - State (and local) statutory whistleblower protection acts

Patchwork of Legal Protections, cont.

Factors to Evaluate:

- Type of wrongdoing disclosed?
- Type of employee?
- How and to whom the was information disclosed?
- Type of retaliation?
- When did the employee become aware of the reprisal?
- Where was the disclosure made?
- Is classified or other protected information involved?

Protection Is Paramount

- **(Experienced) Lawyers Are Essential for the Whistleblower**
 - Limits of NGOs' ability to maintain confidentiality
 - Anonymity not always best or safest route
 - Benefits & Risks of working with journalists
- **Alternatives to accessing information**
 - FOIA
 - Matchmaking with Congress or Agencies
- **Trust=Partnership, Information**

Advice for Whistleblowers

- Talk to an experienced lawyer.
- Create a paper trail or diary of misconduct, disclosures and reprisal.
- Keep evidence in a safe place.
- Organize support among co-workers if possible.
- Secure and protect evidence without removing it.
- Communicate using secure means.
- Don't work with allies during work hours or using work equipment (phones, computer, printers or paper)
- Turn off location tracking in your phone before taking any pictures of documents, and strip other metadata.
- Make sure a large number of people possess documents.

GAP's Food Integrity Campaign

**FOOD INTEGRITY
CAMPAIGN**



www.foodwhistleblower.org

Amanda Hitt
FIC Director
AmandaH@whistleblower.org
202-457-0034 x159



Dana L. Gold, Esq.
Director of Education
Government Accountability Project
1612 K Street NW, Suite 1100
Washington, DC, 20006

danag@whistleblower.org

(202) 457-0034 x160

www.whistleblower.org