



Inside Oversight: Levin Center at Wayne Law Tutorials

SERIES 5 OVERSIGHT GENERALLY

Tutorial: Working with a Whistleblower

In this video, Levin Center experts offer tips and advice on how to work with a whistleblower in a Congressional investigation.

Instructors

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Transcript

Elise: Hi. I'm Elise Bean, and this is Zack Schram, and we're here to share with you some tips we've learned over the years on how to work with whistleblowers in investigations. Both of us conducted oversight investigations for Senator Carl Levin on the Permanent Subcommittee on Investigations in the U.S. Senate.

Zack: Whistleblowers can provide critical information about wrongdoing, important documents, and the unwritten norms, practices, and relationships at an agency or private sector entity. They can help advance an investigation quickly and in ways that might otherwise be impossible.

Elise: At the same time, whistleblowers can, wittingly or unwittingly, distort facts or create impressions that are not completely accurate. So they need to be treated with care. Here are nine tips on how to work effectively with whistleblowers.

Screen all whistleblowers.

Zack: Tip Number One: Screen the whistleblowers who contact your office. Set up a process that specifies who will do the screening and what criteria they will use. Possible criteria include whether the issue is within your jurisdiction, whether the whistleblower has supporting documents, how long ago the events took place, and whether a court or agency has issued relevant rulings. Since you can't help everyone who walks through the door, an established screening process will help you quickly identify the whistleblowers most likely to provide information worth examining.

Use a whistleblower advocacy organization.

Elise: Tip Number Two: If the whistleblower doesn't have an attorney or other professional representative, suggest using a whistleblower advocacy group such as GAP, the Government Accountability Project, or POGO, the Project on Government Oversight. Those organizations have deep expertise on whistleblower laws and procedures, and know how whistleblowers can help investigations. Both organizations are experienced in helping whistleblowers organize the facts and evidence needed to present their cases. By helping a whistleblower prepare, the organizations can save Congressional staff a mountain of work.

Protect the whistleblower's confidentiality.

Zack: Tip Number Three: From day one, protect the whistleblower's confidentiality. While some whistleblowers are willing to go public, others are not. And both public and private whistleblowers may want to provide confidential information. It is up to Congressional staff to protect their identity and information, for example, by limiting the people who know the whistleblower's true name and what they've said, and working out safe ways to communicate. Safeguarding a whistleblower's identity and information not only makes it harder for wrongdoers to retaliate, but also gives your boss more time to review the facts and decide on a course of action. If a whistleblower's identity is breached, try to provide them with as early a warning as you can.

Protect the investigation's confidentiality.

Elise: Tip Number Four: Also take steps to protect the confidentiality of your own investigation. Unless asked to keep discussions confidential, a whistleblower may go to the media and announce your boss' interest in their case. Going public too soon may trigger a backlash against your boss or the investigation, making it harder to get the facts or resulting in the destruction of evidence. So consider asking the whistleblower for a commitment to refrain from public comment until a hearing is announced or a report is released.

Conduct an in-depth interview.

Zack: Tip Number Five: Once you've decided to use a whistleblower, conduct an in-depth interview to get as complete an understanding as possible of the whistleblower's information. Focus on gathering verifiable facts, including names, dates, and events, as well as supporting evidence. Whistleblowers can also provide invaluable background, questions to ask, documents to request, and likely agency responses. At the same time, whistleblowers typically know only part of the story they've witnessed which means their information will need to be tested and confirmed. It is also important to find out the whistleblower's motivations, including whether they've been fired, demoted, or harassed in order to assess possible bias or malice. Another approach is to ask the whistleblower what an opponent might say about them and how the whistleblower would respond.

Don't rely solely on the whistleblower for key facts.

Elise: Tip Number Six: Don't rely solely on the whistleblower for key facts. While a whistleblower can provide invaluable information, that information should be treated as only a starting point for your own investigation, which should include document requests and interviews. It's important to realize that a whistleblower usually doesn't have the full story about a matter, because like most everyone else, they are not privy to all of the key facts, documents, and individuals. They can also get things wrong. Congressional inquiries need to go beyond the whistleblower to examine other individuals, documents, and evidence and build an accurate and complete picture of what happened.

Weigh whether to call the whistleblower as a hearing witness.

Zack: Tip Number Seven: Weigh carefully whether to call the whistleblower as a hearing witness. Asking a whistleblower to testify may end up focusing attention on the whistleblower instead of on the facts or the wrongdoers. The whistleblower's credibility may end up affecting the credibility of the entire hearing, which puts a lot of pressure on that one witness. In addition, critics may introduce damaging information about the whistleblower and turn the hearing into a fight about the whistleblower instead of a fight about the misconduct or wrongdoers. A better approach may be to avoid giving the whistleblower a visible role in the hearing, and instead call other witnesses to present the facts and issues.

Don't force a reluctant whistleblower to testify.

Elise: Tip Number Eight: Don't force a reluctant whistleblower to testify. Hearing pressures may cause the whistleblower to stumble, offer unconvincing

testimony, or even skip town. It may also lead to their being fired or branded a troublemaker, with consequences that may follow the whistleblower for years.

Stay in touch.

Zack: Our final tip: Stay in touch with the whistleblower even after the hearing is over and the investigation is concluded. Some whistleblowers suffer retaliation weeks, months, or even years later that may require your assistance. Also, a whistleblower who blows the whistle once may be willing to do it again.

Elise: Whistleblowers can provide critical assistance to Congress. We hope these tips will help you work effectively with whistleblowers to advance your investigations.

Working with a Whistleblower

- 1. Screen all whistleblowers.**
- 2. Use a whistleblower advocacy organization.**
- 3. Protect the whistleblower's confidentiality.**
- 4. Protect the investigation's confidentiality.**
- 5. Conduct an in-depth interview.**
- 6. Don't rely solely on the whistleblower for key facts.**
- 7. Weigh whether to call the whistleblower as a hearing witness.**
- 8. Don't force a reluctant whistleblower to testify.**
- 9. Stay in touch.**

Elise: Thanks for joining us.

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