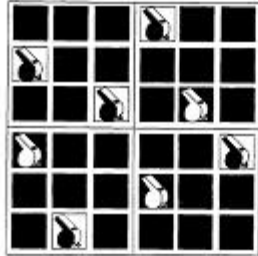


WHISTLEBLOWING

in the Federal Government: An Update



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A Report to the President and the Congress of the
United States by the U.S. Merit Systems Protection
Board



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U.S. MERIT SYSTEMS PROTECTION BOARD
Washington, D.C. 20419

October 1993

The President
President of the Senate

Speaker of the House of Representatives

Sirs:

In accordance with the requirements of the Civil Service Reform Act of 1978, it is an honor to submit this Merit Systems Protection Board report titled "Whistleblowing in the Federal Government: An Update."

Identification and reporting of illegal or wasteful activities is integral to the goal of improving the efficiency and effectiveness of the Federal Government. This report discusses Federal employees' observations and reporting of those activities, and compares current findings with those from MSPB's 1983 study of whistleblowing. Additionally, the report examines what happens to employees who report illegal or wasteful activities, and explores what Federal agencies have done to encourage employees to report fraud, waste, and abuse.

We are encouraged to find an increase in the percentage of employees who are willing to report the illegal or wasteful activities they have observed. Unfortunately, there is also a slight increase in the percentage of employees who say they have experienced reprisal or threats of reprisal for reporting. This report discusses the implications of these findings and offers recommendations for improvement.

We believe you will find this report useful as you consider issues regarding the efficient and effective management of the Federal civilian work force.

Respectfully,

**Ben L. Erdreich, Chairman
Jessica L. Parks, Vice Chairman
Antonio C. Amador, Member**

Office of Policy and Evaluation

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Executive Summary

As demands for service grow while resources shrink, Federal agencies must examine every aspect of their operations in order to achieve new heights of efficiency and effectiveness. Agency management cannot accomplish this goal alone--every employee also plays or should play a role. In this regard, Federal employees have long been encouraged to "blow the whistle" on illegal or wasteful activities in the Government and offered protection against reprisal for doing so. The extent to which this is occurring is the focus of this report by the U.S. Merit Systems Protection Board (MSPB or The Board).

The data discussed in this report are based largely on responses to a recent MSPB survey received from over 13,000 employees. Where applicable, we have contrasted these findings with those from MSPB's 1983 study of whistleblowing in the Federal Government. We also examined the actions taken by Federal agencies to encourage greater employee involvement in this regard. The results show that some progress has been made toward the goal of encouraging employees to report illegal or wasteful activities. Unfortunately, the percentage of employees who claimed they had been the victims of reprisal because of their disclosures has also increased. The report concludes with recommendations for improvement.

In order to encourage more Federal employee involvement in the identification and resolution of problems, statutory protections for Federal employees who "blow the whistle" on fraud, waste, and abuse were provided by the Civil Service Reform Act of 1978 (CSRA). That Act prohibits the taking of

reprisal against any Federal employee who legitimately discloses illegal or wasteful activities and provides for legal sanctions against Federal officials found guilty of violating those prohibitions. These protections were expanded upon through further legislative action in the form of the Whistleblower Protection Act of 1989.

The CSRA also established the U.S. Merit Systems Protection Board and assigned to it some special responsibilities in this regard. Among those responsibilities was the requirement that the Board conduct periodic studies of the Federal civil service system and report to the President and Congress on whether the "public interest in a civil service free of prohibited personnel practices is being adequately protected."

In keeping with its mandate, the Board first examined employees' experiences in reporting illegal or wasteful activities in 1980 and again in 1983. Those studies uncovered some disturbing information. A large percentage of Federal employees were reluctant to report instances of illegal or wasteful activities they had observed. Further, among those who did report such activities, a significant percentage felt they experienced some form of reprisal as a result.

In the decade since the Board last studied this issue, much has happened. Not only have employees' statutory protections been expanded, but there has been an upsurge of emphasis on the value of employee involvement in identifying and resolving work-related problems, including problems involving fraud, waste, and abuse. Given these changes, the Board decided to update its 1983 study. To do this, in late 1992, we sent a questionnaire survey to a large Governmentwide crosssection of Federal employees and sent written interrogatories to agency personnel directors and Inspectors General.

Findings

- **Slightly less than 1 out of every 5 Federal employees surveyed (18 percent) claimed they had personally observed or obtained direct evidence of one or more activities which they believed were illegal or wasteful.** In 1992, 18 percent of the survey respondents said they had seen or had obtained direct evidence of an illegal or wasteful activity, compared with 23 percent in 1983. Waste caused by either a badly managed program or unnecessary or deficient goods or services continued to be the types of activities most frequently observed.
- **In 1992, half of the employees who had observed a perceived illegal or wasteful activity said they had reported it, which is a significant increase compared to just 9 years ago.** Half of the employees surveyed in 1992 (50 percent) who had witnessed an illegal or wasteful activity also said they had reported that activity. This figure contrasts sharply with the 30 percent of employees in our 1983 survey who indicated they had reported such activities.
- **Although a belief that nothing would be done to correct reported fraud, waste, or abuse remained the predominant reason given for not reporting such activity, fear of reprisal was a reason given by at least a third (33 percent) of those choosing not to report.** Fifty-nine percent of the 1992 respondents who had observed illegal or wasteful activities and had not reported them chose not to do so because they felt nothing would be done to correct the activities. This was also the predominant reason given for not reporting by our 1983 survey

respondents. The second most frequently cited reason for not reporting, both in 1992 and in 1983, concerned the risks taken for reporting.

- **Over a third (37 percent) of employees who had reported an illegal or wasteful activity said in 1992 that they had experienced or had been threatened with some sort of reprisal as a result.** This is significantly higher than the 24 percent of employees in the Board's 1983 survey who said they had experienced or had been threatened with reprisal after reporting an illegal or wasteful activity.
- **The most commonly experienced types of perceived reprisal included poor performance appraisal, shunning by coworkers or managers, and verbal harassment or intimidation.** Of the employees who said they had reported an illegal or wasteful activity and had experienced a reprisal action as a result, 47 percent said the reprisal took the form of a poor performance appraisal. Shunning by coworkers or managers was reported by 49 percent of these employees, while verbal harassment or intimidation was experienced by 47 percent of these employees.
- **The most common employee response to a reprisal or threat of reprisal was no response.** In response to a reprisal or the threat of a reprisal, the largest percentage of employees took no action (43 percent). The most frequently cited actions taken by employees who did respond were to complain to a higher level of agency management and to complain to some other office within the agency, such as the Personnel office or the Equal Employment Opportunity office. Among those who took action, however, fewer than 10 percent reported that their situations improved as a result of that action.
- **Agencies reported they are making efforts to encourage more employees to report illegal or wasteful activities.** Most of the agency personnel directors and Inspectors General responding to our interrogatories reported the existence of agency initiatives or programs to educate and encourage employees to report fraud, waste, and abuse. Although there is some indication these efforts may be having a positive effect, employees still report little knowledge of their rights and responsibilities in this regard and little confidence in the protections offered.

Conclusions

Unless employees are willing to bring problems in the workplace out into the open and are encouraged to work to resolve them, and managers become more receptive to the disclosure of such information, the Government cannot hope to achieve its goals of greater efficiency and effectiveness. Based on the findings from this study, it is encouraging to note that some improvement in this regard has occurred. Federal employees are more willing to report illegal or wasteful activities now than they were in 1983.

Unfortunately, the rise in the percentage of employees who said they had experienced reprisal or were threatened with reprisal suggests that the value to the organization of sharing information about wasteful or illegal activities has not yet been fully accepted by all employees and managers. To further encourage employees to share such information in a constructive manner, agencies must create non-

threatening climates in their organizations in which such a practice is valued and rewarded (i.e., rewarded through positive encouragement, candid feedback, and problem resolution). Further, those who take reprisal action against employees making legitimate disclosures must be identified and punished. The following recommendations should help accomplish these goals:

Recommendations

1. Agencies should emphasize organizational change and improvement through efforts such as reengineering, employee involvement, and Total Quality Management. Initiatives such as these emphasize active employee participation in order to promote efficiency in the workplace. Through the use of these programs, employees and managers alike can learn to identify and resolve problems in a non-threatening manner. When all members of the organization value the disclosure of problems, there is less likelihood that those reporting the problems will be retaliated against.

2. Agencies should examine their programs for selecting supervisors and managers to ensure that they are selecting a management team with whom employees will feel comfortable sharing information concerning illegal or wasteful activities. Supervisors and managers need to be proficient in interpersonal and communication skills in order to be receptive to the concerns employees raise regarding illegal or wasteful activities. Unless selection programs incorporate the assessment of these skills, supervisors and managers may be ill-equipped to handle employee disclosures, and instead may try to discourage such disclosures by taking (or threatening) reprisal actions against employees making the disclosures.

3. Agencies should ensure that employees understand the kinds of problems about which they should share information, how the information is handled, and what the safeguards are against reprisal. Employees need to be told what they can realistically expect from sharing information about illegal or wasteful activities. By giving employees a complete understanding of the participation process, employees can become more comfortable reporting problems. Laws enacted to protect employees from reprisal will not encourage employees to share information unless employees know about them and agencies demonstrate commitment to the spirit as well as the letter of the law.

4. Agencies should actively solicit employees' views and give employees feedback concerning those views. The active solicitation of employees' views (whether through surveys or other means) helps to demonstrate that agency management believes employees have something worthwhile to say and that the information employees provide can improve the organization. If employees' views are solicited on a regular basis and agency management demonstrates serious consideration of their views, employees should become more comfortable with (and less threatened by) the entire process of disclosing information about illegal or wasteful activities.

Chapter 1. Introduction

Americans today are facing a tremendous Federal budget deficit--but at the same time are demanding more from the services provided by the Federal sector. In these times, the efficiency and effectiveness of

Government operations has become of utmost importance. So important is it, in fact, that one of the earliest initiatives of the new administration was the creation of a National Performance Review to identify "what works and what doesn't" in the Federal Government.^[1] The willingness of Federal employees to get involved by identifying what works and what doesn't will be critical to the success of this initiative to improve Government performance and to any future initiatives with this objective.

More specifically, employee disclosure of illegal activities, mismanagement, gross waste, or abuse of authority is likely to be an integral part of the Government's attempts to improve efficiency and effectiveness, as employees are encouraged to share ideas and information about problems on the job. Federal employees have long been admonished to "blow the whistle" on fraud, waste, and abuse. In fact, the framers of the 1978 Civil Service Reform Act highlighted the importance of whistleblowing by making retaliation against an employee who blows the whistle 1 of 11 prohibited personnel practices. And since its mission is to ensure that Federal merit systems are free from prohibited personnel practices, the Merit Systems Protection Board has, from its earliest days, been especially interested in whistleblowing activities.

The extent of the Board's interest in whistleblowing is reflected in the topic's being chosen as the subject of one of the Board's first studies. In 1980, the Board conducted a survey of Federal employees in 15 agencies (those agencies having statutorily established Inspectors General at the time) to examine their opinions and experiences concerning the disclosure of fraud, waste, and abuse in their jobs. The Board followed the 1980 survey with a survey in 1983 of employees in all executive branch agencies. The basic findings from the 1983 survey are as follows:

- A sizable percentage of surveyed workers (23 percent) claimed to have personally witnessed or obtained direct evidence of at least one incident of fraud, waste, or abuse over the previous 12 months;
- Of those who had seen or had direct evidence of such an incident, fewer than one-third reported the incident;
- The primary reasons employees gave for not reporting the incidents they had observed were that they thought nothing would be done to correct the situation and *they* thought reporting would be too risky for them.

Obviously, if meeting current goals to improve Government operations is going to depend significantly on employee reporting of information about fraud, waste, and abuse, employees will need to be more willing to do this now than they were in 1983. Events over the years since the 1983 study was conducted may have had a positive impact on employees' attitudes. For example, legislation has been passed to provide added protections to employees who blow the whistle (the 1989 Whistleblower Protection Act). Additionally, the Civil Service Reform Act has been in place for well over a decade. With these developments in mind and in view of the renewed attention to the importance of employee involvement in identifying, reporting, and working to solve workplace problems, the Board decided in 1992 that it was time to revisit the issue of whistleblowing. To do this, we administered a new survey to gauge employees' current opinions and experiences concerning the identification and reporting of fraud, waste,

and abuse, and to see if these have changed since our last survey.

From a random sample of 20,851 employees who received survey questionnaires in the Fall of 1992, 13,432 employees responded with completed questionnaires (representing a 64 percent response rate). The survey--reprinted in appendix A--covered various aspects of employees' worklives. The sample was designed to be representative of fulltime, permanent, executive branch employees.[\[2\]](#)

We also sent interrogatory surveys to personnel directors and Inspectors General of the 29 largest agencies in the Federal Government. These surveys focused on the agencies' activities relevant to the recommendations the Board made based on the 1983 survey results for encouraging employees to share information on illegal or wasteful activities. (A list of agencies responding to the interrogatory surveys is in app. B.)

In reviewing our survey results, it is important to keep in mind that the percentages we report concerning how many employees observed fraud, waste, and abuse should not be inferred to represent incidence rates of fraud, waste, and abuse. Perhaps a number of employees had witnessed the same activity and they all reported it on the survey; or, conversely, perhaps an employee reported one activity, but that activity had occurred numerous times. Thus, the percentage of employees who said they had seen an example of illegal or wasteful activity does not necessarily equate to the amount of illegal or wasteful activity that occurred in the Government during the survey period.

Additionally, it is also important to note that "fraud, waste, and abuse" is largely defined by the person observing it. Because the Government is so large and diverse, no one definition of fraud, waste, and abuse could possibly fit the complexity of organizational settings in which one finds Federal employees.

For these reasons, we chose to let our survey respondents determine whether the activities they observed were examples of fraud, waste, or abuse. Therefore, while this report does not purport to provide any data concerning the actual incidence of fraud, waste, and abuse in the Government today, it does provide useful information concerning employees' perceptions of illegal or wasteful activities--as well as their perceptions of retaliation for disclosing such activities. These same parameters applied to our two earlier studies on whistleblowing.

In the chapters that follow, we examine the results of the employee and agency surveys within the context of how things have changed since our last (1983) survey. (We used the 1983 data for comparison purposes because the 1981 survey was limited to employees in 15 agencies.) We explore differences in the types of illegal or waste ful activities employees observed and how they reacted to these activities. We look at how agencies have tried to educate and encourage employees to disclose information about illegal or wasteful activities. We examine the legal history of whistleblower protections. Finally, we discuss what our findings imply for continued efforts to improve Government efficiency and effectiveness.

Chapter 1 Endnotes:

[1] Ann Devroy and Stephen Barr, "Gore Heads Latest Government Evaluation," Washington Post, Mar. 4, 1993, p. A23.

[2] Excluded were agencies predominantly composed of employees who are not covered by Title 5 of the U.S. Code, such as the Postal Service, the Federal Bureau of Investigation, and the Tennessee Valley Authority

Chapter 2. Observations of Illegal or Wasteful Activities

Key Findings

- Compared to 1983, a smaller percentage of Federal employees in 1992 said they had personally observed or obtained direct evidence of illegal or wasteful activities. In 1992, 18 percent of employees reported having seen or obtained evidence of such activities, versus 23 percent in 1983.
- The types of illegal or wasteful activities most frequently cited by employees in 1992 included waste caused by badly managed programs (35 percent) and waste caused by unnecessary or deficient goods or services (18 percent). These types of activities were also among those observed by the highest percentages of employees in 1983.
- The place that the largest percentage of employees said the illegal or wasteful activities occurred was outside their workgroups but within their agencies (63 percent).
- When asked about the costs involved in the illegal or wasteful activity, almost half (44 percent) gave estimates of \$1,000 or more.

What Percentage of Employees Saw or Obtained Evidence of Illegal or Wasteful Activities?

When asked if they had personally observed or obtained direct evidence of one or more illegal or wasteful activities involving their agencies (other than activities they had read about in the newspaper or heard about as a rumor), 18 percent of the survey respondents answered "yes." (From this point, we refer to this group as the "observers.") This is significantly lower than the proportion of respondents to our 1983 survey (23 percent) who said they had observed or had obtained evidence of such activity. What accounts for this difference?

As previously discussed, the *percentage* of employees observing fraud, waste, and abuse does not necessarily equate to *incidence of* fraud, waste, and abuse. Nonetheless, the two are likely related--if there's less fraud, waste, and abuse to see, there are also likely to be fewer people spotting such activities. Given that agencies' budgets have grown tighter over the last decade, perhaps policymakers and administrators have become much more cognizant of how they spend their resources, and have made efforts to reduce waste and improve efficiency. There is certainly evidence of such efforts throughout the Federal Government, as we see an upsurge of programs designed to eliminate inefficiency and make operations more effective (e.g., Total Quality Management programs[\[3\]](#)).

It is interesting to note, however, that even though the percentage of employees who said they had seen these activities was smaller in 1992 than in 1983, the types of activities most frequently cited in 1983 were still the ones most frequently cited in 1992.

[The abuse I've seen is that] doctors [at this institution] receive [meals regularly] from one particular drug company. I consider this a form of bribery. It leads to the doctors in charge authorizing large drug orders and equipment purchases at noncompetitive prices * *.*

Survey Respondent

Observations of Illegal or Wasteful Activities

What Types of Illegal or Wasteful Activities Were Seen? As can be seen in figure 1, among the 1992 survey group the activity most frequently cited as the most serious illegal or wasteful activity observed was "waste caused by a badly managed program," cited by 35 percent of observers. In 1983, this was also the most frequently cited activity, seen by 38 percent of observers. "Waste caused by unnecessary or deficient goods or services" and "other serious violation of the law or regulation" were also at the top of the list of activities seen by observers responding to our 1992 and 1983 surveys. The activities cited by the fewest 1992 observers--"accepting bribes or kickbacks" and "stealing Federal funds"--were also lowest on the list in 1983.

Figure 1. Types of Illegal or Wasteful Activities Observers Cited as the Most Serious in 1983 and 1992

Activity	Percentage of Observers Citing Activity
Waste caused by a badly managed program	Reported by 38% of our respondents in 1983 and by 35% of our respondents in 1992
Waste caused by unnecessary or deficient goods or services	Reported by 13% of our respondents in 1983 and by 18% of our respondents in 1992
Other serious violation of law or regulation	Reported by 14% of our respondents in 1983 and by 13% of our respondents in 1992
Use of an official position for personal benefits	Reported by 10% of our respondents in 1983 and by 12% of our respondents in 1992
Stealing Federal property	Reported by 12% of our respondents in 1983 and by 6% of our respondents in 1992
Waste caused by ineligible people receiving funds, goods, or services	Reported by 3% of our respondents in 1983 and by 5% of our respondents in 1992
Tolerating a situation or practice which poses a danger to public health or safety	Reported by 3% of our respondents in 1983 and by 5% of our respondents in 1992
Unfair advantage given to a contractor, consultant, or vendor	Reported by 6% of our respondents in 1983 and by 4% of our respondents in 1992

Stealing Federal funds	Reported by 1% of our respondents in 1983 and by 2% of our respondents in 1992
Accepting bribes or kickbacks	Reported by less than 1% of our respondents in 1983 and by less than 1% of our respondents in 1992

In regard to wasteful activity, what I observe may not be illegal, but excessive funds are] being used because of not planning ahead and spending money on unnecessary items (such as remodeling).

Survey Respondent

*Many programs are badly managed due to too many controls (not worth the costs), budget and manpower games, and influence by special interests. These problems are much more prevalent than * *
* waste, fraud, or abuse for personal gain.*

Survey Respondent

It is interesting that "waste caused by a badly managed program" was cited by over one-third of the observers responding to our surveys, in both 1983 and in 1992. By far, this was the most frequently cited illegal or wasteful activity. Why did larger percentages of observers cite this type of activity rather than the 10 other illegal or wasteful activities listed in our survey? The reason may lie partly in the fact that a countless variety of activities could represent waste caused by a badly managed program. In contrast, activities like stealing Federal property or accepting bribes or kickbacks typically involve more narrowly defined events. Thus, employees might have more opportunity to observe wasteful activities caused by a badly managed program than activities such as stealing Federal funds.

The attitude is, "if it's appropriated-spend it," whether you need it or not.

Survey Respondent

In a sense, all employees have some opportunity to observe the way their organization's programs are managed, and to decide whether they are badly managed or not. On the other hand, a much smaller

activities (e.g., by working in jobs in which they would ever be involved in awarding contracts, or by performing work that could potentially have an impact on public health or safety).

*[The waste I've seen] relates to a few supervisors not effectively managing their employees (e.g., not properly scheduling projects, tolerating long breaks), * * * equipment loss or damage.*

Survey Respondent

Because waste caused by a badly managed program can involve a wide range of activities, deciding that one has seen this type of waste may require more subjective judgment than deciding one has observed other types of illegal or wasteful activities listed in our survey. As noted, above, activities such as stealing Federal property or accepting bribes or kickbacks typically involve narrowly defined events, and there is likely to be more agreement among observers of these activities that something illegal or wasteful has occurred. In contrast, with regard to waste caused by a badly managed program, *two* individuals may observe the same events but perceive them completely differently. This is especially true when the program in question is somewhat controversial. For example, judging from the two survey respondents' comments highlighted at the top of the next page, some employees apparently view the operation of affirmative action programs as wasteful. These same programs are probably seen very differently by policymakers and others developing and administering them (and by employees benefitting from them).

Women and minorities are being promoted over more capable white male applicants to meet [equal employment opportunity] objectives. This detracts from morale and reduces the agency output from the limited resources which are available.

Survey Respondent

Until it is just as wrong to hire a minority because he or she is a minority as it is to hire a white because he or she is white, we are going to have incompetent people working in the Government. To me [this is] fraud and waste.

Survey Respondent

Occasionally in this report we will compare waste caused by a badly managed program to all other illegal or wasteful activities observed. We do this for two reasons: waste caused by a badly managed program was cited by such a large proportion of observers; and deciding that such waste did occur appears to require a more subjective judgment than deciding about some of the other types of activities. By doing so, we hope to provide additional clues concerning how employees determine what is an illegal or wasteful activity, and how they make decisions concerning the reporting of such activities.

I've seen a lot of contractors who take advantage of the Government. I think we should evaluate the contractors, and the evaluations should be distributed to all Government agencies. And then [we should] award contracts based not only on low bids but past contract performance.

Survey Respondent

Where Were Illegal or Wasteful Activities Seen? Employees who had observed some illegal or wasteful activity were asked to note the place(s) where the activity had originated or occurred. Sixtythree percent of the observers reported that the illegal or wasteful activity had occurred or originated outside their workgroups but within their agencies. Fortythree percent of the observers had seen the activity in their own workgroups. And 12 percent of the observers reported that the activity had occurred or originated with a contractor or vendor. Only 5 percent of the observers had seen the activity at another Federal agency.

A few comments about these findings are in order. First, it should be noted that the percentage of employees with an opportunity to observe a contractor's or vendor's performance is likely to be very small. Thus, the smaller percentage reporting a contractor or vendor as the source of the illegal or wasteful activity does not necessarily mean that contractors or vendors are less likely to be involved in such activities than Federal employees; it only means there is less opportunity for employees to observe them engaging in these activities.

Second, it is interesting that the largest percentage of observers reported seeing the activity outside their own workgroups. While it is certainly possible to accurately detect illegal or wasteful activities outside one's immediate working environment, it is also likely to be the case that the further one gets from the source of an activity, the more subjective the judgment about the activity becomes. This is because people on the outside are not privy to information regarding why certain decisions were made or actions taken. Also, they may not fully understand the work done by other groups (i.e., the functions performed, the way the work is supposed to be carried out). This lack of understanding could conceivably lead one to misinterpret others' activities as wasteful when, in fact, they are not. Since the largest proportion of observers identified waste caused by a badly managed program as the type of waste they had seen, is it

possible that many of them were basing that judgment on things they had seen outside their own workgroups?

Our survey data indicate that this was the case. Seventy percent of the observers who had seen waste caused by badly managed programs indicated that it had occurred outside their work groups but within their agencies. Only 56 percent of the observers who had seen other types of activities said the activities had occurred outside the workgroups. Because over two-thirds of the observers who had identified waste caused by a badly managed program had seen it "from the outside looking in," we have to recognize the possibility that some of those activities may have been perceived inaccurately. This does not mean,

however, that the perceptions of the 70 percent should be discounted.

Table 1. Estimated Costs of Wasteful or Illegal Activities	
Cost of Activity	Percentage of Observers Estimating
Less than \$100	3
\$100 - \$999	7
1,000 - \$4,999	9
\$5,000 - \$100,000	19
More than \$100,000	16
Dollar value can't be put on acctivity	14
Don't know	31

Table 2. Estimated Costs of Illegal or Wasteful Activities by Type of Activity Seen		
Percentage of Observers Estimating		
Cost of Activity	Badly Managed Program	Other Wasteful or Illegal Activities
Less than \$100	1	4
\$100 - \$999	3	11
1,000 - \$4,999	5	12
\$5,000 - \$100,000	23	18
More than \$100,000	31	8
Dollar value can't be put on acctivity	9	15
Don't know	28	33

*The wasteful activity [I observed]:
spendingthousandsof dollars sendingpeople
to conferences, from which the workers*

gain no benefits relative to their jobs.

Survey Respondent

What Costs Were Involved in Illegal and Wasteful Activities? Although all illegal or wasteful activities involve a cost to the Government, some such activities are more costly than others, and many involve costs that are difficult or impossible to determine. In fact, when we asked the observers to estimate the dollar value involved in the activity each had seen, 31 percent didn't know the costs involved. This is understandable, given that there are many ways to estimate cost.

Nonetheless, many observers were able to estimate the costs involved. As can be seen in table 1, 44 percent said that the costs of the illegal or wasteful activities were \$1,000 or greater. The percentage of observers estimating costs to equal or exceed \$1,000 is very similar to the 46 percent of observers in 1983 who estimated costs at that level.

When comparing 1992 cost estimates made by those who had observed waste caused by a badly managed program versus those who had observed other types of activities, we see a noticeable difference in the estimates given, as table 2 shows. A much higher percentage of those who had observed badly managed programs estimated costs to exceed \$100,000 compared to those who had observed other activities (31 versus 8 percent). As can also be seen in table 2, 59 percent of those who had observed waste caused by a badly managed program estimated costs to equal or exceed \$1,000, whereas only 38 percent of those who had observed other illegal or wasteful activities estimated costs to be that great.

Why did a higher percentage of those who had observed waste caused by badly managed programs estimate costs to equal or exceed \$1,000 than those who observed other types of activities? One possible reason is that more subjectivity is involved in estimating the costs involved in a badly managed program than the costs associated with the other activities. For example, in the case of waste caused by unnecessary or deficient goods or services, one might actually have receipts available to determine cost (e.g., one could easily determine the cost of a defective vehicle by examining the invoice for it). A badly managed program, however, may actually involve many different, hard-to-measure costs. For example, a poorly managed employee recruiting program might incur a variety of costs, including: the cost of travel and per diem; the cost of interview instrument development; and the cost of losing potentially successful candidates due to poor planning by recruiters.

The higher percentage of observers who had seen waste caused by badly managed programs who estimated costs to equal or exceed \$1,000 may also be due to the nature of the activity observed. That is, activities such as stealing Federal funds or giving unfair advantage to a contractor or vendor are typically discreet events which may occur only a few times. Waste caused by a badly managed program, however, is an activity which, almost by definition, occurs over time. It is possible that the longer (or more frequently) an activity occurs, the higher the cost of the activity. This explanation for the differences in cost estimates is born out by the differences found in estimates of frequency of activity

occurrence: 52 percent of observers who had seen waste caused by badly managed programs said the activity had occurred frequently; only 42 percent of observers who had seen other types of illegal or wasteful activities had seen them frequently.

Obviously, as far as the goal of improving the efficiency and effectiveness of the Federal Government is concerned, employees' observations of illegal or wasteful activities are helpful only if those observations are reported and acted upon. Given that almost one-fifth of our survey respondents said they had observed such activities, how many of these observers then reported what they had seen? And does the type of activity seen have an impact on whether they chose to report it? Chapter 3 looks at whether observers reported what they had seen and why those who didn't report chose not to.

Chapter 2 Endnotes:

[3] W. Edwards Deming, "Quality, Productivity, and Competitive Position," MIT Center for Advanced Engineering Study, Cambridge, Mass., 1982.

Chapter 3. Employees' Reporting of Illegal or Wasteful Activities

Key Findings

- Half of the observers (50 percent) of an illegal or wasteful activity reported that activity to someone other than a friend, family member, or coworker. This figure contrasts sharply with the 30 percent of observers who indicated in our 1983 survey that they had reported such activities.
- When observers reported an illegal or wasteful activity to someone other than a friend, coworker, or family member, the largest proportion reported the activity to their immediate supervisors (36 percent) or to someone above their immediate supervisors (20 percent). Very few observers said they had reported the activity to sources outside the agency: for example, only 2 percent had reported to Congress and fewer than 1 percent each had reported to the Office of the Special Counsel, the General Accounting Office, or the news media.
- When all survey respondents (regardless of whether they had seen an illegal or wasteful activity) were asked about the importance of 10 different factors in encouraging them to report an illegal or wasteful activity, whether that activity might endanger people's lives was rated the highest. In contrast, being eligible to receive a cash award for reporting an illegal or wasteful activity was a very important motivator to only 10 percent of employees responding to our survey.
- Fifty-nine percent of the observers who chose not to report the illegal or wasteful activities they had witnessed did so because they felt nothing would be done to correct the activity. This was also the predominant reason observers gave in our 1983 survey for not reporting. Concern about the risks taken for reporting was second on the list of reasons for not reporting, both in 1992 and in 1983.

What Percentage of Observers Reported? In the report based on our 1983 *survey*, the Board noted that only 30 percent of employees who had observed illegal or wasteful acts reported what they had seen to someone other than a coworker, friend, or family member. This was cause for great

concern, because so much potentially valuable information that could help improve the effectiveness, efficiency, and safety of Government programs was being lost. Also of concern was the fact that such a large majority of employees were reluctant to come forward when provisions of the Civil Service Reform Act had specifically been included to encourage the sharing of this type of information. Whether because of skepticism that the information would be acted on in good faith or fear for one's career in Federal service, it was clear that employees were largely unwilling to come forward with information.

Our 1992 survey data, however, are much more encouraging. With regard to the most serious illegal or wasteful activity they had seen, half of the observers (50 percent) said they had reported the incident to someone other than a family member, friend, or coworker.[4] (From this point, we refer to this group as "reporters.") This is a fairly dramatic increase over the 30 percent of observers in 1983 who said they had done this and indicates that employees are apparently becoming more willing to disclose information about problems they see.

Why did half of our 1992 observers report problem activities when fewer than one-third of the 1983 group were willing to? It is likely that some of the changes that have occurred in the Federal workplace over the past decade contributed to the willingness of employees to report illegal or wasteful activities. For example, the passage of the Whistleblower Protection Act (WPA) in 1989 may have sent the message to Federal employees that it's important to share information about problems they see. Employees who observe illegal or wasteful activities may feel more comfortable disclosing information about those activities with the additional protections provided by the WPA. Also, many agencies have recently initiated programs designed to encourage employees to identify problems and help devise solutions, and these may have helped create climates more conducive to sharing information about illegal or wasteful activities. As employees have become more "empowered," they have probably begun to feel more confident about raising issues with their superiors that they previously would have been reluctant to discuss. Perhaps the old atmosphere of "don't rock the boat" is now being replaced with that of "everybody grab a paddle."

What Motivated Employees to Report? To encourage all employees to report illegal or wasteful activities they might see, we need to understand what actually motivates employees to report these activities. We had several ways of exploring this issue with our survey group. First, we asked all employees who responded to our survey (regardless of whether they had observed an illegal or wasteful activity) to rate the importance of 10 different factors in encouraging them to report illegal or wasteful activities. As can be seen in figure 2, the potential of the activity for endangering lives was seen as the most important motivator out of all the activities listed. Ninety-six percent of the respondents said that this would be a very important factor in encouraging them to report.

Figure 2. Importance of Factors In Motivating Employees to Report Illegal or Wasteful Activities

Factor	Percentage of Observers Citing Factor
Activity might endaner people's lives	Reported by 96% of our respondents to be "very important", 3% said "somewhat important" and 1% said "not an

	important reason."
Something would be done to correct the activity	Reported by 69% of our respondents to be "very important", 28% said "somewhat important" and 3% said "not an important reason."
You could be protected from any sort of reprisal	Reported by 69% of our respondents to be "very important", 24% said "somewhat important" and 7% said "not an important reason."
Activity was serious in terms of cost to the Government	Reported by 67% of our respondents to be "very important", 31% said "somewhat important" and 2% said "not an important reason."
There were adequate legal protections against unlawful retaliation for reporting the activity	Reported by 66% of our respondents to be "very important", 27% said "somewhat important" and 7% said "not an important reason."
Your identity would be kept confidential by the people to whom you reported the activity	Reported by 55% of our respondents to be "very important", 29% said "somewhat important" and 16% said "not an important reason."
The activity was a serious ethical violation, although monetary costs were small	Reported by 51% of our respondents to be "very important", 41% said "somewhat important" and 9% said "not an important reason."
The wrongdoers involved in the activity would be punished	Reported by 48% of our respondents to be "very important", 38% said "somewhat important" and 14% said "not an important reason."
You would be positively recognized by management for a good deed	Reported by 22% of our respondents to be "very important", 23% said "somewhat important" and 55% said "not an important reason."
You would be eligible to receive a cash award	Reported by 10% of our respondents to be "very important", 18% said "somewhat important" and 72% said "not an important reason."

Also of great importance were whether something would be done to correct the reported activity, and whether the activity was something that the employee considered serious in terms of costs to the Government. Of much less importance to most employees was eligibility to receive a cash award for reporting such activities. This particular finding provides little support to the often heard suggestion that giving cash rewards for reporting (e.g., such as a portion of money saved by stopping a wasteful activity) would encourage substantially more employees to report illegal or wasteful activities.

*I have witnessed wasteful and improper activities * * * but have neglected to report them to supervisors because I felt that they already knew about them but chose to ignore them for one reason or another.*

Survey Respondent

In addition to asking about factors which might encourage them to report an illegal or wasteful activity, we asked all survey respondents about how likely they would be to report wrongdoing by a variety of individuals. As can be seen in figure 3, a larger percentage of employees said they would be "somewhat" or "very likely" to "blow the whistle" on an illegal or wasteful activity if the wrongdoers were contractors or vendors, or political appointees than if the wrongdoers were their own supervisors or coworkers. Thus, *who* is involved in the illegal or wasteful activity may affect whether an employee reports the activity or not.

Figure 3. Likelihood of Employees to Blow the Whistle on Wrongdoers
"How likely would you be to 'blow the whistle' when the wrongdoer is."

Wrongdoer	Likelihood of Blowing the Whistle
Immediate Supervisor	Reported by 69% of our respondents as "very or somewhat likely", and 31% as "very or somewhat unlikely "
Higher Level Supervisor	Reported by 71% of our respondents as "very or somewhat likely", and 29% as "very or somewhat unlikely "
Coworker in Workgroup	Reported by 76% of our respondents as "very or somewhat likely", and 24% as "very or somewhat unlikely "
Federal Employee Outside Workgroup	Reported by 84% of our respondents as "very or somewhat likely", and 16% as "very or somewhat unlikely "
Political Appointee	Reported by 86% of our respondents as "very or somewhat likely", and 14% as "very or somewhat unlikely "
Contractor or Vendor	Reported by 92% of our respondents as "very or somewhat likely", and 8% as "very or somewhat unlikely "

To report this problem would have [meant] not only a serious charge against the employee involved, but it would have highlighted very poor oversight by the layers of management over that position. That would have had an impact on me and my supervisor, which I could not risk.

Survey Respondent

Another way we looked at what motivates employees to report illegal or wasteful activities was to focus on employees who had actually observed an illegal or wasteful activity (observers). Specifically, we wanted to know if observers were more likely to report some types of activities than others. Table 3 shows the percentage of observers seeing each activity who reported the activity. As can be seen in the

example, observers who had seen activities such as "accepting bribes or kickbacks" or "tolerating a situation or practice which poses a danger to public health or safety" were much more likely to report the activity than observers who saw activities such as "use of an official position for personal benefit" or "stealing Federal property." Perhaps observers viewed the first two activities as more serious or dangerous to the public at large than the latter two; or perhaps observers had less faith that actions would or could be taken to correct the latter two activities. (It is important to note that observers' decisions to report the latter two activities were affected by their estimates of the activities' monetary costs: the greater the costs, the more likely they were to report them.)

Table 3. Percentage of Observers Who Reported the Activity	
Type of Activity Observed	Percentage of Observers Who Reported
Stealing Federal funds	53
Stealing Federal property	37
Accepting bribes or kickbacks	78
Waste caused by ineligible people receiving funds, goods, or services	56
Waste caused by unnecessary or deficient goods or services	41
Use of an official position for personal benefit	35
Waste caused by a badly managed program	52
Unfair advantage given to a contractor, consultant, or vendor	46
Tolerating a situation or practice which poses a danger to public health or safety	78
Other serious violation of law or regulation	59

A final way we explored what motivates employees to report illegal or wasteful activities was to look at why some observers chose not to report what they had seen. We asked observers who didn't report the illegal or wasteful activities they had seen the reason(s) why they chose not to report. As can be seen in figure 4, the most frequently cited reason for not reporting illegal or wasteful activities was the belief that nothing would be done to correct the activity. This was also the most frequently cited reason for not reporting these activities by respondents to our 1983 survey. It is somewhat discouraging to note that among those who chose not to report, there was still such an apparent lack of confidence in the good will of those receiving the reports.

Figure 4. Reasons Why Observers Chose Not to Report Illegal or Wasteful Activities

Reason	Percentage of Observers Selecting Reason (Observers could select more than one reason)
I did not think anything would be done to correct activity	59
I was afraid of being retaliated against at work	33
Reporting activity would have been too great a risk for me	28
I was afraid my identity would be disclosed	20

I did not have enough evidence to report activity	15
I was not sure to whom I should report activity	14
Activity had already been reported	12
I did not think anything could be done to correct activity	10
I did not want to get coworkers/supervisors in trouble	10
I did not think it was my responsibility to report it	7
I did not think the activity was serious enough to report	6
Other	6

This lack of confidence became obvious when we compared the percentage of observers who said they didn't report because they felt nothing *would* be done to correct the activity (59 percent) with those who felt nothing *could* be done (10 percent). The difference between the percentages suggests even more that observers have little confidence in the willingness of the recipients of the reports to put a stop to the illegal or wasteful activities.

*I reported waste * * * and no manager would stand up to stop the waste. The typical answer was, "We'll correct it next time." Next time has happened twice already.*

Survey Respondent

As can be seen in figure 4, the second and third most frequently cited reasons for not reporting concerned fears of retaliation. (Concern about the risks involved in reporting was also the second most frequently cited reason in 1983.) The percentages of observers who were concerned about what would happen to them personally if they reported a problem, coupled with the high percentage of observers who thought nothing would be done about the illegal or wasteful activity if reported, again suggests that many observers are not convinced that recipients of the disclosures of illegal or wasteful activities act on them appropriately.

Relatively few observers thought that the activity they had seen wasn't serious enough to report or that it wasn't their responsibility to report. Fourteen percent did not report the activity because they weren't sure whom they should report it to. Though this was not one of the primary reasons given for not reporting, the fact that 14 percent did not know whom to report the information to is somewhat disturbing. It suggests that there are still Federal employees who have not been adequately educated about reporting illegal or wasteful activities. This concern is compounded by the fact that the 14 percent

figure reported here reflects only those who had seen an illegal or wasteful activity in the 12 months preceding administration of the survey. There may be other employees who haven't seen illegal or wasteful activities who also wouldn't know whom to report the activities to if they do see them.

Protection under the Whistleblower [Protection] Act is a myth. I would not encourage anyone to "blow the whistle" on waste, fraud, or abuse.

Survey Respondent

Did Whistleblower Protections Encourage Observers to Report Illegal or Wasteful Activities?

As noted previously, the Whistleblower Protection Act of 1989 was passed to strengthen employee protection against retaliation for disclosing information about illegal or wasteful activities. Given that "fear of retaliation" was the second most frequently cited reason for not reporting illegal or wasteful activities, does this mean employees feel these whistleblower protections are still inadequate? To examine this issue, we looked at: (1) how much employees knew about actions they could take if they were retaliated against for blowing the whistle on illegal or wasteful activities; (2) whether agencies had specifically informed employees of their rights in the event of retaliation; and (3) the extent to which employees believed their rights would enable them to improve the situation to their satisfaction if they were retaliated against.

Of those employees who said they had seen an illegal or wasteful activity (i.e., observers), only 33 percent knew at least "some" or "a lot" about the actions they could take if they were retaliated against for whistleblowing. However, the survey data showed that observers who reported the illegal or wasteful activities they had seen were somewhat more knowledgeable about the actions they could take than employees who did not report what they had seen. Figure 5 compares the extent to which reporters and nonreporters were knowledgeable of the actions they could take.

Figure 5. Reporters' and Nonreporters' Knowledge of Actions They Could Take if Retaliated Against for Whistleblowing

32% of Reporters and 41% of Nonreporters stated they knew "nothing" of the actions they could take if retaliated against for Whistleblowing.
29% of Reporters and 31% of Nonreporters stated they knew "a little" of the actions they could take if retaliated against for Whistleblowing.
27% of Reporters and 22% of Nonreporters stated they knew "some" of the actions they could take if retaliated against for Whistleblowing.
12% of Reporters and 6% of Nonreporters stated they knew "a lot" of the actions they could take if retaliated against for Whistleblowing.

When asked whether their agencies had specifically informed them of their rights should they ever be retaliated against for whistleblowing, a sizable majority (87 percent) of observers said "no." Although one might expect that observers who chose to report the illegal or wasteful activity they had seen would have been more likely to receive information from their agencies concerning their protections against retaliation than those observers who chose not to report, this was not the case--there was no appreciable difference between the two groups. Based on the observers' survey responses, it does not appear that agencies have "gotten the word out" about protections afforded by the 1989 Whistleblower Protection Act.

When asked to what extent they believed their rights would help them improve their situation to their satisfaction should they be retaliated against for whistleblowing, observers were skeptical. As can be seen in figure 6, the majority either didn't believe their rights would help much or didn't know whether their rights would help. However, the finding that only 23 percent of the observers believed their rights would help them is not entirely surprising, given the previous finding that only 33 percent of the observers even knew about actions they could take if retaliated against.

Figure 6. Extent Observers Believed Their Rights Would Help Them if Retaliated Against for Whistleblowing

60% of observers said "a little or not at all"
18% of observers said "don't know"
13% of observers said "moderately"
10% of observers said "considerably or completely"

One might expect that if observers believe their rights will help them improve their situation if they are retaliated against, they'd be less likely to fear retaliation (and thus more likely to report illegal or wasteful activities). Surprisingly, observers who believed their rights would help them were no more likely to report illegal or wasteful activities than those who didn't believe their rights would help them. However, there was an important exception: observers who believed to a considerable extent that their rights would help them and who were very knowledgeable of their rights, were more likely to have reported an illegal or wasteful activity than other observers. Thus, knowing that actions are available if one is retaliated against may encourage observers to report the illegal or wasteful activity--and this knowledge becomes an even more powerful motivator if the observers also believe that those rights will help to improve their situation.

To Whom Were These Activities Reported? As can be seen in figure 7, other than coworkers, the most frequently cited recipient of the report of illegal or wasteful activity was the observer's immediate supervisor. Given that employees are more likely to have access to their immediate supervisors than anyone outside their workgroups, the immediate supervisor would seem a logical recipient of such information. Also, the sharing of job-related problems with the person in charge of the workgroup is encouraged (at least officially) in most work settings. The occurrence of an illegal or wasteful activity is something that many observers would see as a problem for either the workgroup or the agency as a

whole or even the overall Government. Finally, observers may believe that someone they know well is more likely to act on their report of a problem than someone they don't know well. And of the report recipients listed in figure 7 who would be in a position to rectify an illegal or wasteful activity, immediate supervisors are likely to be the ones best known by the observers.

Figure 7. Recipients of Reports of Illegal or Wasteful Activities--Percentage of Observers Reporting to Recipient (Observers could select more than one recipient.)

38% -- Coworkers
36% -- Immediate Supervisor
27% -- Family Member or Friend
20% -- Higher Level Supervisor
8% -- Higher Level Agency Official
6% -- Union Representative
6% -- Agency Inspector General
4% -- Other
3% -- Law Enforcement Official
2% -- Congressional Staff Member or Member of Congress
Less than 1% -- Office of Special Counsel
Less than 1% -- General Accounting Office
Less than 1% -- Advocacy Group
Less than 1% -- New Media

Other than family members or friends, the second most frequently cited recipient of information about illegal or wasteful activity was a higher level supervisor. As can be seen in figure 7, observers rarely reported the activity to the Office of the Special Counsel, the General Accounting Office, Congress, the news media, or an advocacy group (even though all of these groups have played important roles in increasing public awareness of whistleblowing over the last several decades).

As we have seen in this chapter, there was a sizable increase from 1983 to 1992 in the percentage of observers who reported illegal or wasteful activities. We explored a number of reasons why observers decided to report these activities, and why they chose not to. In the next chapter, we look at what happened to the observers who chose to report illegal or wasteful activities.

Chapter 3 Endnotes:

[4] Family members, friends, and coworkers were not included in the figure concerning reporting because, generally, these individuals cannot be assumed to be in positions to take actions concerning the illegal or wasteful activity. When these categories are included, the percentage reporting rises to 62.

Chapter 4 . What Happened to Employees Who Reported Illegal or Wasteful Activities?

Key Findings

- We asked employees who had reported an illegal or wasteful activity about the effect(s) their actions had had on them personally. While some reported that they had received credit by management for reporting (13 percent) or that nothing had happened to them (37 percent), others cited more negative effects, such as their supervisors being unhappy with them (33 percent) or someone above their supervisors being unhappy with them (38 percent).
- Thirty-seven percent of all employees who had reported some type of illegal or wasteful activity believed they had been threatened with or had experienced some sort of reprisal. This is significantly higher than the 24 percent of reporting employees who said in the Board's 1983 survey that they had been threatened with or had experienced reprisal.
- The most prevalent *threat* of reprisal that reporting employees believed they had received was the threat of a poor performance appraisal (12 percent). The most commonly *experienced* reprisals reported by employees included: shunning by coworkers (49 percent), verbal harassment (47 percent), and poor performance appraisals (47 percent).
- In response to their perceived reprisal or the threat of reprisal, most employees said they took no action (43 percent). The two most frequently cited types of actions taken by employees were complaining to a higher level of agency management (36 percent) and complaining to some other office within the agency, such as the personnel office or Equal Employment Opportunity (EEO) office (32 percent).

I have been made aware of my rights for whistleblowing--when you blow the whistle, it is the end of your career.

Survey Respondent

What Happened to Employees Who Reported an Illegal or Wasteful Activity? In this chapter we examine what happened to employees who chose to report the illegal or wasteful activity they had observed (reporters). We look only at reporters who said they were identified as the source of the report (i.e., 56 percent of all who reported). [\[5\]](#)

There are a number of potential personal consequences that reporters may perceive as resulting from their actions. Reporting might result in some sort of positive outcome (such as being given credit by management for sharing the information); or it could result in some sort of negative outcome (ranging from supervisors or coworkers being upset with them, to reprisal or threat of reprisal); or it could result in a more or less neutral outcome (i.e., nothing may happen to them). It is also conceivable that the outcome for the reporter may be mixed (e.g., they may be given credit by management but also experience some sort of reprisal).

Figure 8 shows some of the effects reporters said they experienced as a result of reporting an illegal or wasteful activity. The outcomes presented in figure 8 might be viewed as a mix of positive and negative-

-but short of reprisal or the threat of reprisal.

Because reporters might have experienced reprisal or threat of reprisal in addition to some of the outcomes listed in figure 8, we have broken down the percentages of reporters who said they experienced each outcome into two groups--those who also said they experienced reprisal or threat of reprisal, and those who didn't.

As can be seen in figure 8, only 13 percent of reporters were given credit by management for having reported the problem. This finding is somewhat discouraging in light of the fact that one way of encouraging employees to share information about problems they see is to recognize them in some positive way for their interest in making things better. Over one-third (37 percent) of the reporters said nothing had happened to them as a result of their having reported a problem.

Figure 8. Effect of Reporting Illegal or Wasteful Activity on the Reporter

Outcome	No Reprisal	Reprisal
I was given credit by my management	This Outcome reported by 12% who did not report experiencing reprisal or threat of reprisal.	This Outcome reported by 1% who did report experiencing reprisal or threat of reprisal.
My coworkers were unhappy with me	This Outcome reported by 9% who did not report experiencing reprisal or threat of reprisal.	This Outcome reported by 10% who did report experiencing reprisal or threat of reprisal.
My supervisor was unhappy with me	This Outcome reported by 12% who did not report experiencing reprisal or threat of reprisal.	This Outcome reported by 21% who did report experiencing reprisal or threat of reprisal.
Someone above my supervisor was unhappy with me	This Outcome reported by 13% who did not report experiencing reprisal or threat of reprisal.	This Outcome reported by 25% who did report

		experiencing reprisal or threat of reprisal.
Nothing happened to me	This Outcome reported by 32% who did not report experiencing reprisal or threat of reprisal.	This Outcome reported by 5% who did report experiencing reprisal or threat of reprisal.

Some reporters believed that others were unhappy with them for having reported the problem. Nineteen percent said their coworkers were unhappy, 33 percent said their supervisors were unhappy, and 38 percent said someone above their supervisors was unhappy. But as can be seen in figure 8, many reporters who said that coworkers, supervisors, or managers were unhappy with them also said that they had experienced reprisal or threat of reprisal for reporting the illegal or wasteful activity. Even though having unhappy coworkers or supervisors as a result of sharing information about an illegal or wasteful activity may not be as negative an outcome as experiencing reprisal (or being threatened with reprisal), some reporters either faced both kinds of outcome or were defining the unhappiness outcome as reprisal or threat of reprisal.

In the next section, we take a closer look at reporters who said they had experienced reprisal or threat of reprisal for having reported an illegal or wasteful activity.

How Many Employees Experienced Reprisal or Threat of Reprisal For Reporting? As noted previously, the 1978 Civil Service Reform Act and the 1989 Whistleblower Protection Act contained provisions specifically safeguarding individuals who report illegal or wasteful activities from retaliation for reporting those activities. This was done to encourage employees to report such activities so that the Federal service might be made as efficient and effective as possible. Judging from the percentages of observers who said in 1992 and 1983 that they had reported the illegal or wasteful activities they had seen (i.e., 50 percent and 30 percent, respectively), employees seem to be more willing to report now than almost a decade ago. But have the laws enacted to protect employees from reprisal been successful in safeguarding those who decide to report illegal or wasteful activities?

Our survey data suggest that the laws to protect reporters from reprisal have not been entirely successful. When asked the question "Within the last 12 months, have you personally experienced some type of reprisal or threat of reprisal by management for having reported an activity?," 37 percent of the reporters believed they had. When we asked reporters this question in 1983, only 24 percent believed they had experienced reprisal or threat of reprisal.

Why was there an increase in the percentage of reporters who said they had experienced reprisal or threat of reprisal from 1983 to 1992, when protections were added during that time to safeguard

reporters from reprisal? The next section sheds some light on this question by examining the types of reprisal or threats of reprisal that reporters said they had experienced.

What Kinds of Reprisal or Threats of Reprisal Did Reporters Perceive? The reprisal (or threat of reprisal) reporters said they had experienced took various forms. As can be seen in figure 9, the most commonly cited *threat* of reprisal that reporters said they had received was the threat of a poor performance rating (12 percent said they had been threatened with this). This was also the most commonly perceived threat in 1983, cited by 32 percent of reporters. The threat of assignment to less desirable or less important duties and the threat of verbal harassment were also, among the most frequently cited threats in 1992.

[The reprisal I received was] a lower performance appraisal. My manager was very careful to not do anything drastic. She was being watched.

Survey Respondent

As can be seen in figure 9, not nearly as many reporters said they had received threats of reprisal as said they had actually received reprisals. The most commonly cited form of *actual* reprisal that reporters believed they had experienced was being shunned by coworkers or managers (49 percent reported experiencing this). This finding is interesting, especially in light of the push in recent years to encourage employees to share information about problems they see in order to improve efficiency and effectiveness. Why would coworkers and managers shun an employee who was trying to help the organization be more effective? Perhaps some employees and managers see such disclosures as "making trouble." In these times of budget constraints and workforce cutbacks, some employees and managers may believe that disclosures of any improprieties or waste (especially in their own work units) could threaten their own futures in the organization. Thus, they may shun the reporter in order to discourage such disclosures. The large percentage of reporters who said they had experienced shunning suggests that agencies (especially managers) may have done an inadequate job of creating climates in which sharing information about problems is valued as a means of improving the organization.

As can be seen in figure 9, other commonly cited forms of reprisal included poor performance appraisals, verbal harassment, and assignment to less desirable or less important duties. As was the case in 1983, the most commonly cited reprisals tended to be in the form of fairly subtle actions. (These actions were "subtle" in that they wouldn't necessarily require official documentation to carry out. For example, a supervisor could have informally assigned an employee to different job duties or verbally harassed an employee on the job, but formal documentation--and perhaps approval from other agency officials--would have been needed to transfer, suspend, or fire an employee.)

Figure 9. Types of Reprisal Reporters Said They Were Threatened with or Experienced

Activity	Percentage of Observers Citing Activity
Poor performance appraisal	Reported as threatened with by 12% of our respondents and experienced by 47% of our respondents
Assignment to less desirable or less important duties	Reported as threatened with by 8% of our respondents and experienced by 37% of our respondents
Verbal harrassment or intimidation	Reported as threatened with by 7% of our respondents and experienced by 47% of our respondents
Denial of promotion	Reported as threatened with by 5% of our respondents and experienced by 19% of our respondents
Other	Reported as threatened with by 3% of our respondents and experienced by 15% of our respondents
Transfer or reassignment to a different job with less desirable duties	Reported as threatened with by 4% of our respondents and experienced by 23% of our respondents
Grade level demotion	Reported as threatened with by 4% of our respondents and experienced by 3% of our respondents
Reassignment to a different geographical location	Reported as threatened with by 3% of our respondents and experienced by 5% of our respondents
Suspension from my job	Reported as threatened with by 3% of our respondents and experienced by 3% of our respondents
Denial of award	Reported as threatened with by 3% of our respondents and experienced by 30% of our respondents
Denial of training opportunity	Reported as threatened with by 2% of our respondents and experienced by 19% of our respondents
Fired from my job	Reported as threatened with by 2% of our respondents and experienced by 1% of our respondents
Shunned by coworkers or managers	Reported as threatened with by 2% of our respondents and experienced by 49% of our respondents
Required to take Fitness-for-duty exam	Reported as threatened with by 2% of our respondents and experienced by 2% of our respondents
Reporters could select more than one type.	

I was a whistleblower [years ago] and was banished to another work area because of it. Management did not want to hear it then and does not want to hear it now. They can (and do) punish you in a more subtle manner now than in years past.

Survey Respondent

We found that the forms of reprisals which represent more official personnel actions (and arguably

represent more serious forms of reprisal) have shown a distinctive decline since 1983--with the notable exception of "poor performance appraisal," which was experienced by 21 percent of reporters in the 1983 survey and 47 percent in the 1992 survey. Actions such as transfer or reassignment to a different job with less desirable duties, reassignment to a different geographical location, suspension from the job, and grade level demotion were all experienced by a smaller percentage of reporters responding in 1992 than in 1983. While this decline is encouraging, the overall rise in reported reprisal is not. This increase appears to be the result of a rise in the more subtle forms of reprisal, which is disturbing from the standpoint that the rise may represent a more insidious strategy for retaliating against those who disclose information about illegal or wasteful acts. That is, as public outcry against acts of reprisal grows, perhaps those who choose to take reprisal against others have just made their actions less obvious--taking actions that they believe they can get away with.

How Much Did Retaliation Victims Know About Their Rights? As noted in chapter 3, observers who reported illegal or wasteful activities tended to be somewhat more knowledgeable about the actions they can take if they are retaliated against than those who had observed illegal or wasteful activities but didn't report them. Generally, though, there were no differences in how the two groups (reporters and nonreporters) viewed the potential effectiveness of their rights to take action if retaliated against for reporting illegal or wasteful activities. (However, as was previously noted, the vast majority of observers knew little about their rights anyway, and thus probably had little basis on which to judge the effectiveness of those rights.)

One might expect reporters who believed they had experienced (or been threatened with) reprisal to have more knowledge of their rights to take action (because, theoretically, they would have a more pressing need to know about their rights) than those who had not experienced actual or threatened reprisal. However, when we compared reporters who said they had experienced (or been threatened with) reprisal with those who had not, we found little difference in the two groups. Over half of the reporters in both groups said they knew little or nothing about their rights. Even so, those who said they had experienced (or been threatened with) reprisal were much less likely to believe that their rights would help them (see fig. 10). And although this belief was apparently based on speculation for over half of the reporters, it may help explain what reporters who had experienced (or been threatened with) reprisal did as a result of the reprisal, as discussed below.

Figure 10. Extent Reporters Believed Their Rights Would Help Them if They Experienced Reprisal or Threat of Reprisal for Whistleblowing (Those Who Experienced Reprisal Versus Those Who Didn't)

To what extent do you think your rights will enable you to improve the situation to your satisfaction if you 'blow-the whistle' and are retaliated against?"
Of those reporting that they "Experienced Reprisal or Threat of Reprisal: 68% said NOT AT ALL, 2% said COMPLETELY, 3% said CONSIDERABLY, 13% said MODERATELY, and 14% said A LITTLE
Of those reporting that they "Did Not Experience Reprisal or Threat of Reprisal: 50% said NOT AT ALL, 1% said COMPLETELY, 13% said CONSIDERABLY, 16% said MODERATELY, and 20% said A LITTLE

What Did Reporters Do as a Result of Reprisal? Given that reporters do have rights and courses of action that they may take if they experience (or are threatened with) reprisal, what action did most reporters in our 1992 survey take in response? The predominant response was that they took no action (43 percent of reporters who had experienced reprisal or been threatened with reprisal). This is not surprising, since reporters who had experienced (or been threatened with) reprisal generally did not believe that their rights would help them correct the reprisal situation.

As can be seen in figure 11, approximately one-third of the reporters who had experienced (or been threatened with) reprisal said they had complained to a higher level of agency management or to some other office within their agency (for example, the personnel office or EEO office). Almost one-fifth of the reporters who had experienced reprisal said they had filed a complaint through their union representative or had filed an EEO (discrimination) complaint. The other alternatives listed in figure 11 were selected by much smaller percentages of reporters.

*Unless agencies are made accountable * **
** and the fear of reprisal is [relieved] by*
positive action to the contrary, [reluctance
to report illegal or wasteful activities] will
not change.

Survey Respondent

Figure 11. Actions Taken by Reporters in Response to Reprisal or Threat of Reprisal

Action	Percentage of Observers Reporting They Took This Action
Took no action	43%
Complained to higher level agency management	36%
Complained to some other office within agency (e.g., personnel office)	32%
Filed a complaint through union representative	18%
Filed an EEO complaint	17%
Took other action	13%
Filed a formal grievance with my agency	12%
Complained to Office of Inspector General in my agency	9%
Filed complaint with the Office of Special Counsel	2%
Filed an action with the Merit Systems Protection Board	2%

Reporters could select more than one action.

What Happened as a Result of Action Taken (or Not Taken) Regarding Reprisal?

Unfortunately, as can be seen in figure 12, very small percentages of the reporters who took action(s) against reprisal actually experienced positive outcomes as a result of the action(s) they had taken. For example, of those who took action(s), only 9 percent said the reprisal was withdrawn, and only 4 percent said the threat of reprisal was withdrawn. On the other hand, almost half said that the action(s) got them into more trouble (45 percent) or that taking the action made no difference (44 percent). Thus, the actions that are made available to reporters who have suffered reprisal or threat of reprisal for blowing the whistle appear to have offered little protection--which is as most employees responding to our survey had speculated.

Based on the survey data presented in this chapter, protections for employees who disclose illegal or wasteful activities are less effective than they should be. An increase in whistleblower protections (as provided by the 1989 Whistleblower Protection Act) did not result in a decrease in the percentage of reporters who said in 1992 that they had experienced reprisal or the threat of reprisal. While there was a decrease in what might arguably be considered more "serious" forms of reprisal, more subtle forms of reprisal appeared to be on the rise. This suggests that further amendments to the legislation protecting employees who disclose information about illegal or wasteful activities against reprisals may not be the most fruitful course to follow to encourage employees to report these activities. Perhaps the better solution lies, instead, in efforts to improve the education of both employees and managers.

Figure 12. Consequences of Reporting Reprisal or Threat of Reprisal

"What happened to you as a result of reporting the reprisal or threat of reprisal?"	
Reprisal Action	Percentage of Observers Reporting This Reprisal
It got me into more trouble	45%
It made no difference	44%
Decision concerning the reprisal action is still pending	24%
The reprisal action was withdrawn	9%
The threat of reprisal was withdrawn	4%
Actions were taken to compensate me for the reprisal action	3%
Reporters could select more than one result.	

As noted previously, all employees and managers need to be made aware of (and convinced of) the value of sharing information about problems and of working towards solutions for those problems. Only in a climate in which employees and managers recognize that making or responding to such disclosures

made more aware of the avenues available for disclosing information and their rights if they believe people are taking reprisal against them. Managers need to be made more sensitive to and receptive to the complaints or information they receive. And based on comments we received from employees responding to the 1992 survey, many managers could probably do a better job of communicating with employees who pass on complaints that the managers may not view as legitimate. And managers who may have had employees that they dismissed as "chronic complainers" must be persuaded not to let their experiences with those employees color their views of all disclosures about illegal or wasteful activities that are brought to them. Some of the disclosures are bound to be legitimate.

In chapter 5 we look at steps agencies have taken to encourage employees to report illegal or wasteful activities and to better educate employees about their rights if they believe they have been retaliated against for having reported these activities. We examine these issues within the context of what the employees we surveyed in 1992 tended to do in response to the illegal or wasteful activities they had observed.

Chapter 4 Endnotes:

[5]We are assuming for the purpose of this report that one cannot experience consequences for an action unless one is identified as the source of that action. The data reported in 1983 are based on the same assumption.

Chapter 5 . Agency Actions to Reduce Fraud, Waste, and Abuse

Key Findings

- Agencies rely on a number of mechanisms to solicit employees' views and knowledge concerning fraud, waste, and abuse. Although all agencies have Inspector General hotlines for reporting fraud, waste, and abuse, some agencies have implemented other programs designed to encourage employees to share information about problems they see. From 1983 to 1992, the increase in the percentage of employees who said they had reported illegal or wasteful activities at least partially attests to the success of some of these efforts.
- Agencies use a variety of training efforts designed to inform employees about various alternatives available to them for disclosing information about fraud, waste, and abuse, and the protections afforded those who make such disclosures. Employees' survey responses concerning the specific information they had received and their knowledge of processes and rights, however, cast some doubt on the effectiveness of agencies' efforts to make employees aware of their formal rights and responsibilities.

Background

In its report based on the 1983 survey, the Board made a number of specific recommendations to agencies concerning how they might encourage employees to report fraud, waste, and abuse. These

recommendations are shown in table 4. To evaluate agencies' responsiveness to the Board's recommendations, we sent interrogatories based on those 1983 recommendations to the personnel directors and Inspectors General of the 29 largest departments and agencies in the Federal Government. This chapter summarizes agencies' efforts regarding the encouragement of disclosing information about illegal or wasteful activities, based on those interrogatories.

How Did Agencies Solicit Employees' Views and Knowledge Concerning Fraud, Waste, and Abuse? In the Board's report based on the 1983 survey, we recommended that Federal agencies actively and periodically solicit employee viewpoints and knowledge concerning fraud, waste, and abuse in order to help assure that the climate within their organizations is conducive to the constructive sharing of information about waste and inefficiency. In making those recommendations, we had in mind a variety of ways an agency might solicit such viewpoints. For example, the agency might ask employees directly what they think about program operations, and whether they detect problems in those operations, through agencywide questionnaire surveys. Or the agency might leave it up to employees to take the initiative to share with management their opinions about program operations or problems in the workplace. In this latter case, the agency might provide vehicles for employees to come forward and voice opinions, such as through "town meetings" or anonymous hotlines. We found much variation in the types of things agencies are doing to encourage employees to report illegal or wasteful activities. Three general ways in which agencies have been soliciting employees' views since our last report was issued are described below:

1. **Surveys of employee opinions.** When personnel directors of the 24 agencies responding to our interrogatories were asked whether they had periodically solicited their employees' views (directly) concerning the occurrence and reporting of fraud, waste, and abuse, the majority (16) said they had not. Most of the agencies who did report soliciting employees' views had not specifically surveyed employees concerning fraud, waste, and abuse, but had conducted agency surveys which touched on issues such as waste and inefficiency. A few agencies reported that specific surveys concerning fraud, waste, and abuse had been administered within specific components of the agency or department (but not agencywide).
2. **Open-door policies.** Another mechanism for reporting fraud, waste, and abuse commonly mentioned by the personnel officers was the establishment of an "open-door" policy or program, in which employees were encouraged to share information about illegal or wasteful activities with supervisors, the Inspector General, or other agency officials. For example, the Department of Veterans Affairs (VA) established a "Tell It To The Secretary Program" which gives employees direct access to the Secretary of Veterans Affairs for reporting problems involving VA operations. As another example, the U.S. Customs Service implemented a cards and letters program whereby employees can voice charges of fraud, waste, and abuse. Also, the Nuclear Regulatory Commission implemented a "Differing Professional Views or Opinions System" in which employees may submit (in writing) a view that differs from the prevailing staff view or official position concerning program operations of the agency. Management evaluates each view submitted and informs the employee of the decision made regarding his or her submission.
3. **Inspector General (IG) hotline.** All agencies reported having an IG hotline on which employees could report fraud, waste, and abuse. Hotline numbers provided by Inspectors General

responding to our interrogatories were verified and found to be in working order. When we called the hotlines, we were typically greeted by a "live" voice during normal business hours and an

answering machine after normal business hours.

Table 4. Previous Recommendations for Encouraging the Reporting of Waste, Fraud, and Abuse

- **Given the limited impact that the current Federal "whistleblower protections" appear to have had relative to the encouragement of constructive employee involvement in identifying or resolving instances of fraud, waste, or abuse, Congress and the Administration should encourage Federal Agency heads to develop or explore alternative or additional methods of achieving that goal.**
- **Agency heads should periodically assure themselves that there is demonstrable agencywide commitment to a philosophy of open communication throughout all levels of the agency. In essence, each agency should be striving for the development of an "organizational climate" which makes constructive internal sharing of information, especially information about possible waste or inefficiency, the norm rather than the exception. Such a climate would be characterized by the following elements:**
 - **The active and periodic solicitation of employee viewpoints and knowledge regarding fraud, waste, and abuse;**
 - **The fair evaluation of employee-supplied information with timely feedback to the involved employees on the results of that evaluation;**
 - **Consideration, during reviews of each employee's performance, of the degree to which they have become constructively involved in identifying and resolving problems related to fraud, waste, and abuse;**
 - **Positive and widely publicized recognition of employee contributions to the reduction of illegal or wasteful activities.**
- **Agency heads should also provide assurance that there will be a prompt and thorough investigation of any allegations or indications of possible reprisal against employees for the legitimate disclosure of information. Should reprisal be found to exist and be documented, of course, prompt corrective action must be taken and the results of that action well publicized to the extent possible.**

Source: U.S. Merit Systems Protection Board, 'Blowing the Whistle in the Federal Government: A Comparative Analysis of 1980 and 1983 survey findings,' October 1984.

Thus, while it appears that all agencies have mechanisms in place for soliciting employees' viewpoints and knowledge regarding fraud, waste, and abuse, the majority do not actively seek such information directly (e.g., through surveys or similar means). All have set up some vehicle (i.e., the hotline) for

employees to use to make disclosures. Not nearly as many, however, have implemented programs designed to actually "empower" employees to play a more active role in identifying problems in their organizations and helping to solve those problems. Few have established programs to improve communication between employees and management--programs that might actually circumvent the need for formal whistleblowing.

For example, as noted earlier in this report, some employees' disclosures of illegal or wasteful activities may have been the result of their misconceptions about program operations or policies, due to inadequate communication between them and agency management. If agencies were to actively seek employee opinions about the operation of agency programs (via anonymous surveys, for example), management could detect where (legitimate) problems exist, and also where educational efforts might be warranted. Solicitation of employee viewpoints in this way could also enable employees to become more active participants in the operation of those programs. By being encouraged to share their views in a nonthreatening way (such as through a survey or small group discussions), misunderstandings which surface about program operations could be cleared up before they escalate to the level of formal whistleblowing.

What Guidance or Training Did Agencies Provide on Reporting Fraud, Waste, and Abuse?

Because a number of options are available for reporting fraud, waste, and abuse, we wanted to know how agencies inform their employees about those options. We asked personnel directors whether their agencies had provided any training or education to employees to make them more aware of various alternatives available for reporting fraud, waste, and abuse. Nineteen out of twenty-four agency personnel directors said that their agencies had given some type of training which at least touched on information about reporting fraud, waste, and abuse.

The most prominent vehicle for disseminating this training, however, was the orientation briefings given new employees. We have to question the effectiveness of such training, given that new employee orientation training typically covers a wide range of topics, and many new employees may feel overwhelmed when inundated with so much information (especially if they are coming into the Federal service for the first time).

Another frequently cited training vehicle was ethics training or standards of conduct training, administered by the Office of Ethics. (All employees are required, by law, to receive ethics training, and the disclosure of illegal or wasteful activities is usually encouraged as part of the principles of ethical conduct.) As is the case with new employee orientation, however, ethics training typically covers a variety of complex issues, and information about reporting fraud, waste, and abuse may not always be given adequate coverage or consideration.

Several agencies mentioned that they had provided informal, "on-the-spot" training to employees who requested information about how to report illegal or wasteful activities. Presumably, employees who had a "need to know" (because they had witnessed an illegal or wasteful activity) were able to get the information they needed. Nonetheless, if agencies were really trying to *encourage* employees to disclose fraud, waste, and abuse, they would make the process as amenable as possible--employees should not

have to seek out information about how to disclose information and what their protections are.

Some agencies indicated that managers and other agency officials periodically had given speeches or briefings to employees concerning the Inspector General hotline, encouraging employees to report illegal or wasteful activities on the hotline.

How effective have agencies been in educating employees about how (and to whom) to report fraud, waste, and abuse, and the protections provided those who do so? Based on our survey of Federal employees, there appears to be a sharp contrast between what agencies think they have communicated to employees and what employees have actually received. As was reported previously, of the observers of an illegal or wasteful activity who didn't report the activity, 14 percent listed as a reason for not reporting, "I was not sure to whom I should have reported the activity." Though not a majority of nonreporters, 14 percent represents a sizable proportion of employees who may have provided very useful information if they had known more about the disclosure process.

Additionally, we asked all employees in our 1992 survey how knowledgeable they were about the actions they could take if they were to blow the whistle and were retaliated against. In response, 67 percent said they knew "little" or "nothing." And when we asked them if their agencies had specifically informed them of their rights if retaliated against for whistleblowing, 79 percent said "no."

Our survey findings are corroborated by an earlier study by the General Accounting Office (GAO). GAO recently reported that of the 19 Federal agencies they studied, most "had neither informed their employees nor developed policies and procedures for implementing the Whistleblower Protection Act of 1989." [\[6\]](#) GAO also reported that some agencies believed the protections provided by the 1989 Whistleblower Protection Act had hindered (or could hinder) their attempts to take legitimate adverse actions against employees. (That is, employees could make a claim of "whistleblower retaliation" in order to stop adverse actions from being administered. These same concerns were also expressed by a few agencies responding to our interrogatories.) If agencies view disclosures of illegal or wasteful activities and the protections provided to employees who make those disclosures as something of a double-edged sword, this may explain their apparent reluctance to develop special programs to educate employees about responsibilities and rights regarding such disclosures.

Of course, there may be other reasons that agencies have not adequately educated employees about the procedures and protections concerning sharing information about illegal or wasteful activities. One reason is that in some agencies it may not be clear who is responsible for educating employees about these issues. Based on responses to our interrogatories, it appears that in some agencies, responsibilities for educating and encouraging employees to disclose fraud, waste, and abuse have not been clearly defined among Inspectors General, personnel offices, and program managers. Thus, in those agencies the attitude may exist that educating employees about reporting fraud, waste, and abuse is "someone else's" responsibility.

Another reason that agencies have not been very effective in educating employees relates to the nature of the disclosure process: from a legal standpoint, it is very complex and options are numerous. For

example, several respondents to our agency interrogatories commented on the problems they have encountered when trying to advise employees about avenues of redress for whistleblower retaliation. Because so many avenues of redress are available--and not all of them operate effectively--they have found it difficult to advise employees about what to do. Thus, the complexity of the process itself is partly to blame for agencies' failure to educate employees effectively.

A third possible reason for agencies' limited and unsuccessful efforts to educate employees concerns the employees themselves. It may be that some employees are provided information about their rights and responsibilities concerning the reporting of fraud, waste, and abuse, but do not fully attend to it. That is, when the information is provided, the employees may not attempt to remember all they hear, but instead determine that they can find out more about it if the need ever arises. If that is the case, they wouldn't be likely to report that they knew much about their rights.

How Can Agencies Better Educate Employees About Reporting Illegal or Wasteful Activities?

Unless employees know how to identify and report the problems they see; are aware of the protections they have if they report those problems; and believe that fraud, waste, and abuse issues are important, there is little hope that agency operations can be made more efficient and effective through the identification of illegal or wasteful activities. How can agencies do a better job, then, of educating employees about these issues?

Ideally, agencies should build the educational efforts around their efforts to promote better communication between employees and management. We know from a previous Board study that such communication needs improvement.[\[7\]](#) In 1992, the Board reported that first-line supervisors and their subordinates did not see eye to eye on the supervisors' effectiveness in communicating with the subordinates. We recommended that agencies focus their supervisory training and development efforts on areas of need, such as communication. And as we noted earlier in the present study, many formal whistleblowing complaints could possibly be circumvented if managers were more sensitive (and responsive) to concerns raised by employees, and if employees had a more complete understanding of the policies, positions, and decisions made in agency program operations.

The ultimate goal of these educational efforts would be to help create a climate in which employees and managers become so accustomed to sharing information and ideas about program operations that they are not threatened by identification of problems. All members of the organization would feel that they have a stake in making their jobs better and, ultimately, their agencies more effective. In fact, a number of Federal agencies have already implemented programs to promote efficiency and effectiveness, (such as Total Quality Management programs), which may work towards accomplishing that goal. Although these programs were not set up specifically to combat fraud, waste, and abuse, they do encourage employees to become more active participants in making work processes more efficient. Such programs promote employee involvement in identifying problems and taking actions to correct them--which may involve the reporting of fraud, waste, or abuse to supervisors and managers who can work with employees to help solve the problems. The more that these employee-supervisory work teams can do to resolve problems at the lowest levels of the organizational hierarchy, the less threatening the whole situation is likely to be for everyone concerned.

Educational efforts, if they are to truly encourage employees to get involved in identifying illegal or wasteful activities, must also focus on the positive outcomes of such involvement. For example, as part of its total education efforts, an agency might want to reward or positively recognize employees who have identified illegal or wasteful activities which have since been addressed. When we asked Inspectors General whether their agencies had positively recognized or rewarded employees who reported fraud, waste, and abuse, 15 of the 26 IG's reported at least one instance in which an employee had been recognized or rewarded.

Most of the IG's who did not know of specific cases in which employees had been recognized or rewarded indicated that often employees who reported fraud, waste, and abuse wished to remain anonymous, and thus public recognition would not have been appropriate. However, an employee's request for anonymity does not necessarily preclude an agency from publicizing the fact that, because its employee(s) were interested enough in the agency to identify and report problems, the agency was made better. In fact, to emphasize the positive impact that disclosing illegal or wasteful activities can have on the operation of Federal agencies, it may be time to stop using the phrase "whistleblowing," because it suggests that employees are being asked to "police" or "rat on" others. But regardless of whether the term is still used, managers should emphasize encouraging employees to get involved by identifying problems and by working with them to resolve those problems.

Although the disclosure of illegal or wasteful activities is a very important management issue, it is also an important legal issue. Chapter 6 briefly examines the history of the legislation and case law concerning whistleblowing.

Chapter 5 Endnotes:

[6] U.S. General Accounting Office, "Whistleblower Protection: Agencies' Implementation of the Whistleblower Statutes Has Been Mixed," GAO/GGD-93-66, March 1993, p. 1.

[7] U.S. Merit Systems Protection Board, "Federal First-Line Supervisors: How Good Are They?," March 1992.

Chapter 6 A Legal Historical Perspective on Whistleblowing

Although many view the 1978 Civil Service Reform Act as the "beginning" of whistleblower protections and rights, the inclusion of whistleblowing provisions in the Reform Act actually reflected a 20-year history of encouraging public disclosures of inappropriate behavior. This encouragement began in 1958 with the passage of the Code of Ethics for Government Service, which exhorted Federal employees to expose corruption wherever they found it. The Code also admonished them to place loyalty to the highest moral principles above loyalty to their departments.

Public disclosures were further encouraged by the passage of the Freedom of Information Act in 1966, which was predicated upon the concept that Federal Government records were public information. This law provided whistleblowers with a statutory justification for exposing misconduct. Their disclosures were vindications of the public's right to know. And the Supreme Court, in 1968, provided whistleblowers with a constitutional underpinning for making disclosures. In *Pickering v. Board of Education*, 391 U.S. 563

(1968), the Court held that First Amendment free speech guarantees protected public employees who criticized the actions of the Government.

However, during the late 1960's and throughout the 1970's there were indications of a need for stronger and more specific whistleblowing legislation that contained strong antiretaliation protections. In that regard, the seemingly successful retaliation against A. Ernest Fitzgerald heightened public and congressional concern about the adequacy of existing laws. Mr. Fitzgerald, generally seen as the father of whistleblower protection laws, had disclosed to Congress the existence of a substantial cost overrun in a military procurement contract and shortly thereafter was removed, allegedly with direct Presidential involvement, from his civil service position in the Department of the Air Force. It was not until years later that his removal was set aside as unlawful.

Reacting to the Fitzgerald case and other events, and in order to encourage effective whistleblowing, Congress created the Offices of Inspector General in the executive branch departments. Those offices were to serve as objective recipients of employee, reports of waste, fraud, and abuse. Congress also intended for those offices to conduct more thorough investigations of allegations of waste, fraud, and abuse than had been done in the past. In addition, Congress recognized that to fully encourage employees to share information about waste, fraud, and abuse, something would have to be done to make employees feel safe from retaliation. At that time there were only a few limited antiretaliation statutes in effect; these laws made it unlawful to retaliate against employees for such things as testifying before Congress or for assisting in EEO investigations.

To provide comparable protection to whistleblowers, the President proposed (and Congress included) broad protections for whistleblowers in the Civil Service Reform Act of 1978. That law made the protection of whistleblowers one of the nine merit system principles. It made acts of unlawful retaliation against whistleblowers one of the 11 prohibited personnel practices. And it empowered the Merit Systems Protection Board to reverse the removal, demotion, or suspension for more than 14 days of any employee who had been the victim of retaliation, while at the same time authorizing the Special Counsel to seek to reverse less serious personnel actions. In addition, the Reform Act authorized the Special Counsel to prosecute any official responsible for acts of unlawful retaliation.

The Reform Act was the first statute to broadly protect the rights of public employees to disclose fraud, waste, or abuse. Since 1978, the number and types of whistleblowing protections have grown exponentially. Following the example of the Federal Government, most States have now enacted broad provisions protecting their employees against retaliation for making disclosures. Moreover, a substantial number of State courts have found it unlawful, even without the existence of statutory protections, for an employer to terminate an employee who has made a disclosure that serves the public interest. And Congress has enacted over 25 different Federal laws which provide additional whistleblowing protections for specific kinds of disclosures, such as disclosures of violations of the Occupational Safety and Health Act or the Migrant, Seasonal and Agricultural Worker Protection Act. In addition, out of concern that there were still significant problems, Congress strengthened and improved the protections contained in the Reform Act by enacting the Whistleblower Protection Act of 1989. The WPA allows Federal employees to appeal to the Merit Systems Protection Board to seek redress for alleged acts of retaliation

involving previously nonappealable personnel actions, such as reassignments and ratings.

The growth of State and Federal whistleblowing laws has been matched by an outpouring of judicial interpretations on such issues as what constitutes "disclosure" or "retaliation" or "fraud, waste, and abuse." [8] The issuance of so many administrative and judicial decisions involving whistleblowing, coupled with the existence of so many whistleblowing statutes, might suggest that whistleblowing is primarily a legal matter. However, as this report's analysis has shown, the existence of legal protections alone will not encourage employees to share such information. Data from Board surveys of Federal employees on whistleblowing have consistently demonstrated that employees will be willing to share information about fraud, waste, and abuse only when they feel that someone will be receptive to the information they share and will help to correct the problems which they've identified.

Chapter 6 Endnotes:

[8] Those interested in examining some of that growing body of case law should read Daniel P. Westman, "Whistleblowing: The Law of Retaliatory Discharge," The Bureau of National Affairs, Inc., Washington, DC, 1991. Readers may also be interested in reading Patricia Price, "An Overview of the Whistleblower Protection Act," Federal Circuit Bar Journal, 69, Spring 1992.

Chapter 7 Summary and Recommendations

It has been almost a decade since the Board last looked at whistleblowing among Federal employees. Our survey data show that from 1983 to 1992 there was an appreciable decrease in the percentage of employees who said they had personally observed or obtained direct evidence of one or more illegal or wasteful activities involving their agencies. The survey data also show that, overall, there was a substantial increase in the percentage of observers who said they had reported illegal or wasteful activities.

That's the good news. The bad news is that there was also an increase in the percentage of employees who said they had experienced reprisal or threat of reprisal for having reported an illegal or wasteful activity. And even though there was a decline in what are arguably the more serious forms of reprisal, it is still troubling to see such an increase in the percentage of employees who felt they had experienced some form of retaliation or threat of retaliation for sharing information about illegal or wasteful activities—especially since added protections have been legislated for those disclosing illegal or wasteful activities since our 1983 report.

What are the implications of these findings? In this period of "reinventing Government," with renewed emphasis on increasing efficiency and effectiveness, it is certainly encouraging that a smaller percentage of employees reported seeing examples of illegal or wasteful activities and that, of those who saw them, a much larger percentage were willing to report these activities. But still, half of those employees who saw illegal or wasteful activities did not report them. They chose not to report for a number of reasons, primarily because they believed nothing would be done to correct the activity or they feared retaliation. So, although many employees took their obligation to report illegal or wasteful activities very seriously, many others were still reluctant to report. This reluctance to report problems is disturbing, because

efforts to increase Government efficiency and effectiveness cannot be completely successful unless most employees are willing to bring problems out into the open and are encouraged to work to resolve them. Of course, even if employees do share information about problems they see, the recipients of this information must be receptive to the information and willing to work with the employees toward problem resolution--even if the problem involves them. Obviously, such a state is not easily accomplished.

Our survey data suggest that although agencies have made some effort to encourage employees to report illegal or wasteful activities, there is still much they should do. Agencies need to focus their efforts on creating an atmosphere in which employees and managers alike see the value in identifying problems and working together to resolve them. The threat associated with disclosing illegal or wasteful activities must be diminished. This can be done only by empowering employees with the control (and the right) to help make changes in the workplace. Managers have a responsibility to see that employees are involved in identifying and resolving problems that employees see.

How do we achieve this goal? Obviously, just telling employees and managers to do these things will not bring about desired results. Instead, organizations must continue to make very basic organizational changes that gradually bring about changes in attitudes and behavior. This will not happen overnight. But there are a number of things that agencies can do to achieve a climate in which sharing information about illegal or wasteful activities is seen as a positive activity--as a way of building more effective organizations and improving the quality of the employees' worklives. Some of these are as follows:

- **Agencies should emphasize organizational change and improvement through efforts such as reinvention, reengineering, and Total Quality Management.** Though some employees (and managers) may view formal programs designed to bring about organizational change as faddish, there is potentially much to be gained by initiating such programs. It is important that all employees be shown top management's commitment to such efforts and that they be given a chance to participate in these efforts. Developing long-range goals for the organization (with employee involvement) can help employees understand where the organization is headed and what their role is in getting there. Active, ongoing employee participation groups (or problem-solving groups) can also go a long way toward convincing employees that the agency does value their opinions about how things are going and their ideas for making things work better.
- **Agencies should examine their programs for selecting supervisors and managers to ensure that they are selecting a management team with whom employees will feel comfortable sharing information concerning illegal or wasteful activities.** As we have suggested in a previous Board study, [\[9\]](#) many agencies emphasize technical skills as opposed to "supervisory" skills in selecting individuals for supervisory positions. Some of those supervisory skills involve communication with employees, interpersonal skills, and sensitivity to employees' concerns. Unfortunately, the lack of those supervisory skills may be hindering effective use of information disclosed by employees. Our survey data show that most employees who report illegal or wasteful activities to their organizations convey the information to their immediate supervisors. But our data also show an increase in the percentage of employees who said they had experienced retaliation or threat of retaliation, and the form of that perceived retaliation had

become more subtle. This increase may indicate that supervisors who received these reports handled the information inappropriately, or employees who reported the activity misconceived the result of reporting--or both. The very fact that some employees believed they had been retaliated against (whether they actually had been or not) should underscore for supervisors and managers the importance of talking to employees about the problems employees identify in the workplace, and ensuring that retaliatory actions are not taken against employees. Supervisors need to be sensitive to employees' concerns about problems they have identified and not just dismiss employees who frequently report activities as "chronic complainers." Employees will not be willing to share information if supervisors and managers are not making appropriate use of such information (e.g., if they are either ignoring it or retaliating against the person who reported it). To help correct this situation, agencies need to ensure that their strategies for selecting individuals for supervisory and managerial positions incorporate an assessment of critical supervisory skills. Agencies also need to swiftly investigate any reports of supervisors or managers taking reprisal actions against employees who disclose information about illegal or wasteful activities and to take appropriate action against supervisors or managers found to be guilty of such retaliatory actions.

- **Agencies should ensure that employees understand the kinds of problems about which they should share information, how the information will be handled, and what the safeguards are against reprisals.** Regardless of the type of employee participation or involvement program established, employees need a thorough understanding of the "ground rules." Agencies should inform employees about what kind of information employees should share, how the information shared will be handled by the recipient, and what protections employees have against retaliation for sharing information. Agencies must also demonstrate a commitment to upholding the laws enacted to protect employees who disclose information by swiftly investigating allegations of reprisal and providing feedback to the employee(s) involved. Employees also need to be made aware of what they can realistically expect from sharing information about illegal or wasteful activities. This includes the fact that not every problem reported will be resolved to the employee's satisfaction--and that such an outcome doesn't necessarily mean that the recipient of the report is trying to hide some wrongdoing. (It may just mean that the employee's perspective about the activity is different from the program manager's perspective or that of anyone else involved in the reporting of the activity.) Again, communication between employees and agency management is key. Distrust of the entire process can result from employees' lack of understanding about what is involved in the process and impatience with the (seeming) lack of progress being made in resolving complaints of illegal or wasteful activities. By giving employees a complete understanding of the participation process, employees can become more comfortable reporting problems.

- **Agencies should actively solicit employees' views and give employees feedback concerning those views.** Although some agencies currently solicit employees' views directly (e.g., through questionnaire surveys or open discussions--"town meetings"), many do not. The active solicitation of employees' views helps to demonstrate that agency management believes employees have something worthwhile to say and that the information employees provide can improve the organization. Critical to that process, however, is feedback to employees concerning

the views they've expressed. Without feedback, employees will be likely to view the exercise as just another example of how the organization ignores what they have to say, and thus they may be discouraged from sharing such information in the future. Feedback can take many forms, but as a minimum should address employees' major concerns and explain how the agency intends to act on those concerns (or why it does not plan to take action).

All Federal employees--managers and nonmanagers alike--have a vested interest in ensuring that their organizations use taxpayers' dollars in the most efficient way possible. Identifying and reporting problems, and working towards the resolution of those problems, is critical to that goal. It is in the best interest of all agencies to clarify and communicate the roles that every employee, manager, and agency official play in creating an atmosphere of open communication, whereby all see the value in identifying and correcting problems in agency operations, and protecting those who share information about problems they see from reprisal. Employees must feel free to share such information, and managers must be receptive to that information. Only when agencies welcome input from all employees concerning workplace problems can the Federal Government fully serve the public interest.

Chapter 7 Endnotes:

[9] U.S. Merit Systems Protection Board, "Federal First-Line Supervisors: How Good Are They?," March 1992.

Appendix A: 1992 Merit Principles Survey



U.S. MERIT SYSTEMS PROTECTION BOARD
WASHINGTON, DC 20419

Dear Federal Coworker:

We need your help with this survey related to Federal employment issues. You are part of a relatively small group of Federal employees selected randomly to represent the views of over

2 million Federal employees. Results from this survey will be reported to Congress and the President. **Your answers are important.**

The U.S. Merit Systems Protection Board (MSPB) is an independent Federal agency created by Congress in 1978. One of our tasks is to monitor the health of the Federal personnel system. One way we do that is by periodically conducting surveys of Government employees.

This survey gives you an opportunity to share your opinions and experiences concerning your job, Federal merit principles, whistleblowing, and other topics. You may complete the survey at your work site or at home. It should take you about 30 minutes to complete. Please base your answers on your own experiences and opinions. **We will keep your answers completely confidential. Results will be summarized in such a way that no individual respondent can be identified.** Please do not put your name anywhere on this questionnaire.

Please return the completed questionnaire in the enclosed postage-paid envelope within 5 days after you receive it. If you would like a copy of the reports published as a result of this survey, you may write to us at the address shown on the next page. If you have any questions concerning this questionnaire, please contact Paul van Rijn at (202) 653-7701 or Bruce Mayor at (202) 653-8900.

Thank you for your assistance.

Sincerely,

Evangeline W. Swift
Director, Policy and Evaluation

The Bicentennial of the U.S. Constitution 1787-1987

**U.S. MERIT SYSTEMS PROTECTION BOARD
WASHINGTON, DC 20419**

1992 MERIT PRINCIPLES SURVEY

This survey asks for your opinions and experiences on a variety of personnel issues. The questionnaire is divided into the following three sections:

- SECTION I, **COMPLETED BY ALL EMPLOYEES**, covers a wide range of areas, including your job; the personnel practices in your work group; whistleblowing; and individual and organizational performance.
- SECTION II, **COMPLETED BY SUPERVISORS**, concerns managing people.

- SECTION III, COMPLETED BY ALL EMPLOYEES, covers individual background information.

You may not have to answer every question in this survey. Instructions will tell you which questions to skip.

MARKING INSTRUCTIONS

- DON'T use ink or ballpoint pens. Use a No. 2 pencil.
- Erase completely and cleanly any answer you wish to change.
 - Don't make any stray marks in this booklet.

CORRECT MARK: ○ ● ○ ○

INCORRECT MARKS: ✕ ◐ ◑ ◒

USE NO. 2 PENCIL ONLY

PRIVACY ACT NOTICE

Collection of the requested information is authorized by the Civil Service Reform Act of 1978. Your participation in this survey is completely voluntary and none of the information you choose to supply will be associated with you individually.

REPORT REQUEST ADDRESS

[Editor's Note: The original survey instrument mailed to the respondents, was attached at this point in the 1992 report. However, the survey's original design cannot be completely represented here in conformance with the Americans with Disabilities Act. If you are interested in obtaining a copy of this and/or other reports published as a result of this survey, please address your request to:

U.S. Merit Systems Protection Board
Office of Policy and Evaluation
1615 M Street, NW
Washington , DC 20419]

Appendix B: Agencies Returning Interrogatory Survey

Agencies Returning Inspector General

Interrogatory Surveys

Department of Labor
Agency for International Development
Department of Agriculture
Central Intelligence Agency
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Environmental Protection Agency
Federal Emergency Management Agency
General Services Administration
Department of Health and Human Services
Department of Housing and Urban Development
Department of Justice
National Aeronautics and Space Administration
U.S. Nuclear Regulatory Commission
Office of Personnel Management
Railroad Retirement Board
Resolution Trust Corporation
Small Business Administration
Department of State
Department of Transportation
Department of the Treasury
Department of Veterans Affairs
Department of the Army
Department of the Air Force

Agencies Returning Personnel Director Interrogatory Surveys

Department of State
Department of Agriculture
Department of Defense
Department of Commerce
Department of the Army
Department of Education
Department of Energy
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of the Treasury

General Services Administration
National Aeronautics and Space Administration
Environmental Protection Agency
Department of the Navy
Department of Transportation
Department of Veterans Affairs
Agency for International Development
Department of the Air Force
Office of Personnel Management
Department of Health and Human Services
U.S. Information Agency
U.S. Nuclear Regulatory Commission
Railroad Retirement Board
Resolution Trust Corporation