National Security Whistleblowing*

Michael Joseph[†] Michael Poznansky[‡] William Spaniel[§]

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Abstract

Whistleblowers play an integral role in oversight. In almost every employment sector, organizational insiders who come forward to expose alleged wrongdoing are protected from retaliation. Unlike every other sector, national security whistleblowers face steep fines and jail sentences for coming forward. Why are they treated so differently? We argue that the difficulty of verifying allegations of wrongdoing in the national security arena make it impossible to condition rewards and punishments on the veracity of whistleblowers' claims. In such cases, harsh punishments prove effective for encouraging honest whistleblowing. We use mechanism design to build these claims and investigate the implications through an analysis of proposed reforms to whistleblower protection laws in the United States over the last 40 years. Afterward, we develop a case study using an in-depth interview with Thomas Drake, a whistleblower who exposed waste, fraud, and abuse at the National Security Agency in the early- to mid-2000s. This article has significant implications for the study of whistleblowing, disclosure dilemmas, and oversight in the covert sphere.

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[†]Postdoctoral Fellow, International Security Studies, Yale University. (michael.frederick.joseph@gmail.com, www.michaelfjoseph.com).

[‡]Assistant Professor, Graduate School of Public and International Affairs, University of Pittsburgh. (poznansky@pitt.edu, http://michaelpoznansky.com).

[§]Assistant Professor, Department of Political Science, University of Pittsburgh. (williamspaniel@gmail.com, http://williamspaniel.com).

1 Introduction

In both the private and public sectors, whistleblowers—organizational insiders who step forward to expose alleged wrongdoing—are vital for oversight (Asenbaum, 2018, 465). Whistleblowers face enormous risks because they expose the abuses of the most powerful members of our society (e.g., CEOs and the president). It is for this reason that most modern democracies write legislation to protect whistleblowers from reprisal and even reward them with financial inducements (Stanger, 2019; Tily, 2015, 1193-1994).

But in most democracies, including the United States, there is one area where whistleblowers are not protected: national security (Ellsberg, 2010, 773). National security whistleblowers face steep punishments for exposing government wrongdoing (Fuller; 2014, 250; Moberly 2012, 95-96; Sagar 2013, 141-143; Vladeck, 2008, 1533-1534). In 2012, John Kiriakou was sentenced to 23 months in prison for revealing information about the U.S. torture program against terrorist suspects (Shane, 2013). One year later, Edward Snowden was charged under the Espionage Act for leaking details about the U.S. government's mass surveillance program (Finn and Horwitz, 2013). Right now, Reality Winner is serving a 63 months sentence for sharing classified information about Russian interference in U.S. elections (Savage and Blinder, 2018).

Why do countries like the United States legislate to fiercely punish national security whistleblowers but reward and protect whistleblowers in other sectors? There are two intuitive but incomplete answers to this question. First, policymakers are in a position to both abuse national security secrecy and write the whistleblowing laws. Therefore, they write laws to punish those who expose their bad behavior. But different branches of government perform different tasks: the executive has the power to exploit secrecy; the legislature writes the laws that govern what happens to whistleblowers that come

forward and how their claims are verified. We theorize about the legislature (Congress in the U.S.). To be clear, our study departs from other rationalist scholars who analyze Congress as the main actor who investigates or punishes the president when wrongdoing has been reported (Colaresi, 2014). Instead, we use mechanism design to analyze Congress's strategic incentives to write laws (i.e., set the rules) to which whistleblowers and the executive must adhere (i.e., play the game).

Second, some argue that society benefits from keeping national security issues secret at all costs. In their view, national security whistleblowers do not perform a public service because they expose classified information that damages the national interest (Sagar, 2013, 108–109).[1] Even if we accept that national security requires a unique level of secrecy, however, the public still wants to know when the executive abuses its power to pursue private interests, wastes public resources, or displays incompetence (Moberly, 2012, 118). When national security whistleblowers come forward with allegations of waste, fraud and abuse, they are not revealing secrets the public wants to protect. If anything, whistleblowers are desperately needed in national security because secrecy makes oversight so difficult. This is especially true in the digital age because the media, and other sources that used to expose government abuse, are increasingly viewed with skepticism. Whistleblowers remain one of the few sources the public finds credible.

In this article, we analyze the strategic consequences that follow from the laws legislators write to decide the fate of whistlebowers. We begin from the premise that legislators face a dilemma between secrecy and oversight in how they craft national security whistleblower legislation. This dilemma stems from the verification of allegations concerning executive wrongdoing. In a perfect world, whistleblowers would all make accurate claims and we could simply believe them. But they may be mistaken, may

[1]For a useful discussion of these challenges, see Colaresi (2014).

not have the full picture, or may come forward with knowingly false claims. Thus, we cannot simply take them at their word but must investigate their allegations and give the accused an opportunity to present evidence that those allegations are wrong.

In most sectors, one might want Congress to write laws that mandate whistleblowers' claims are thoroughly investigated and verified. But in the national security sector, the information the executive must reveal to defend itself against allegations is often top-secret. Legislators are reluctant to write laws that force the executive into a position where they must reveal highly classified information to defend against allegations of waste, fraud, and abuse. In short, national security whistleblowers are different not because we do not want them to report wrongdoing but because the public interest precludes procedures where these allegations can be verified with a high degree of confidence (Sagar, 2013, 123-124).

This has two strategic implications. First, the public interest cannot be served by protecting national security whistleblowers so long as we accept the executive's right to keep important national security secrets secret. In sectors where verification is feasible, we can investigate claims and reward whistleblowers deemed to be honest. In national security, we are unwilling to verify claims and therefore cannot condition rewards on their veracity.[2] The upshot is that if Congress writes laws to protect whistleblowers when allegations cannot be verified, it creates perverse incentives for individuals to come forward with false or misleading claims. As a result, if we write laws to protect national security whistleblowers, we cannot know if those that come forward are honest. This leaves legislators no alternative but to exempt national security whistleblowers from protections. It even creates incentives for the legislature to punish whisteblowers to

[2]On the challenges of verifying national security claims even if the judiciary was involved and had access to relevant information, see Sagar (2013, 144-147).

prevent dishonest whistleblowers from coming forward with false allegations.

Second, the fear of punishment and reprisal creates unexpected opportunities for altruistic whistleblowers to make credible claims even when they cannot be independently verified. Whistleblowers who value private benefits such as fame or revenge are deterred from making false allegations because they face the prospect of significant private costs such as prison, professional disgrace, and fines. Those who care most about the public interest and believe the executive has abused classification to damage the national interest are willing to come forward and face these penalties. This is because they care less about the private cost they will pay relative to the public benefit they create by alerting the public and the legislature to executive abuse. To be clear, we do not think the legislature punishes whistleblowers because they want to make whistleblowers' claims credible. Rather, we think this is a convenient byproduct that occurs because protections and rewards will not work when verification is unavailable.

This insight helps explains how states resolve complex disclosure dilemmas in the national security space (Carnegie and Carson, 2018, 2019). The conventional wisdom is that the government faces a trade-off between protecting secrets and facilitating oversight (Colaresi, 2014). However, through harsh punishments Congress inadvertently opens up a mechanism wherein national security whistleblowers can make credible allegations of wrongdoing without revealing contextual or even extraneous sensitive national security information. The reason this works, we argue, is because underlying evidence is not needed when only honest whistleblowers are willing to come forward.

We substantiate our argument using evidence about the two main actors in our model: the legislature and whistleblowers. On the legislative side, we analyze whistleblower protection reform in the United States. We show that Congress repeatedly introduced laws designed to increase legal protections for national security whistle-

blowers. These efforts failed because Congress accepted that credibly verifying national security whistleblowers' claims would require revealing classified information and that this was unacceptable. Moreover, we show that Congress understood that protecting whistleblowers in the absence of credible verification would create perverse incentives for those with dishonest claims to come forward. On the whistleblower side, we analyze new interview data with a whistleblower: Thomas Drake. Drake, who blew the whistle on various abuses at the National Security Agency, helps verify our claims about why whistleblowers come forward and their belief that going public despite the risks increased their credibility.

This article provides the first game-theoretic framework explaining why whistleblower laws are written the way that they are. We take seriously the insights from scholars who take a legal or normative approach and who have pointed out that national security whistleblowers laws and behavior are unique (Moberly, 2012; Papandrea, 2014; Sagar, 2013; Stanger, 2019). We then adapt strategic models of whistleblowing in non-national security sectors to explain this difference (Beim, Hirsch and Kastellec, 2014, 2015; Ting, 2008). We also contribute to the literature on secrecy in international relations. Much of this research has focused on why states would be attracted to hidden tools of statecraft (Carson, 2018; O'Rourke, 2018; Poznansky, 2019) as well as the factors that might disincentivize states from reaching for the quiet option (Joseph and Poznansky, 2018; Smith, 2019). Far less attention has been paid to how strategic actors overcome some of the unique challenges associated with oversight in the covert sphere, a realm dominated by low levels of transparency and asymmetric information.[3]

[3]For important exceptions, see Colaresi (2014); Spaniel and Poznansky (2018).

2 National Security Whistleblowing in Context

In our theory, whistleblowers act as "fire alarms" who alert the public, Congress, or another relevant entity when they observe a policymaker abuse their power (McCubbins and Schwartz, 1984). Scholars generally believe that whistleblowers benefit society overall because they are in a unique position to quickly expose executive abuse and may even deter decision-makers from abusing their power in the first place (Beim, Hirsch and Kastellec, 2014; McCubbins and Schwartz, 1984, 166; Ting, 2008).

The U.S. Congress passed the first significant whistleblower protections as part of the Civil Service Reform Act in 1978. Subsequent legislation, including the Whistleblower Protection Act (1989), the Sarbanes-Oxley Act (2002), and the Whistleblower Protection Enhancement Act (2012), aimed to close existing loopholes and strengthen these protections (Nielsen, 2018, 13). In each case, however, national security whistleblowers were excluded from protections (Bellia, 2012, 1526). Instead, Congress developed different laws to address whistleblowers from the national security sector. Although these regulations have evolved over time, legal scholars have identified at least two ways in which national security professionals are treated differently from everyone else.

First whistleblowers from most sectors can report allegations of waste, fraud, and abuse to an entity outside the agency where they work. In the U.S., this entity is the Office of the Special Counsel. OSC has the authority to order investigations of alleged wrongdoing following a claim (Moberly, 2012, 58).[4] External reporting channels and investigations are important because those that abuse power face incentives not to address allegations of their own wrongdoing, and to bury reports that suggest they have abused power (Nielsen, 2018, 14-15).[5] External investigators are also less likely

[4]See also https://osc.gov/Pages/DOW.aspx.

[5]For a discussion of why Inspectors General within the executive branch are often ineffective, see

to punish those who speak out than insiders who may want to silence whistleblowers (Sagar, 2013, 133).

In contrast, national security whistleblowers are not permitted to report allegations to an independent actor like OSC. Instead, they are required to go to entities within the agency where they work or a designated member of the executive branch. As we discuss below, recent legislative changes have tried to redress this. National security professionals can now report to select members of Congress, but only if the whistleblower is first authorized by an Inspector General—who is part of the executive branch. If the Inspector General does not authorize external reporting, then the employee must seek approval from the head of their agency to report externally. Otherwise, they can only use internal channels. Analysts note that these internal veto points effectively close off these reporting options (Moberly, 2012, 108-109). Even when Congress does receive information, they may be prohibited from acting upon it (Vladeck, 2008, 1545).

Second, laws protect most whistleblowers in the non-national security sector from employer-driven reprisals. Whistleblowers in these sectors that are fired, denied promotion, or face hostile working conditions, can complain to the Office of Special Counsel. Their case can also be adjudicated if need be in front of the Merit System Review Board with the possibility of appealing to a federal court (Moberly, 2012, 129-130).

National security professionals do not have the same protections from reprisals. One of the first pieces of legislation aimed at this group—the Intelligence Community Whistleblower Protection Act of 1998—was somewhat of a misnomer. As Papandrea (2014, 493) noted of the legislation, it "provides no legal remedy for retaliation against a covered employee. The ICWPA specifically states that '[a]n action taken by the Director or the Inspector General ... shall not be subject to judicial review." In 2012, Obama

Stanger (2019, 166-167).

issued Presidential Policy Directive 19 which allows national security whistleblowers to appeal to a panel of Inspectors General in the event of reprisals. But the decision "is [still] subject to review by the agency head, thereby potentially mitigating much of the benefit of the outside review" (Papandrea, 2014, 496).[6] The Intelligence Authorization Act of 2014 aimed to codify the protections contained in PPD-19. In the end, however, it still failed to allow for judicial review of complaints (DeVine, 2019, 5-6).

Due in part to the nature of existing whistleblower protection laws, national security whistleblowers cannot act as effective fire-alarms. The executive can practice waste, fraud and abuse with little chance of getting caught via a whistleblower. For those that believe oversight is valuable, the question is: Why would Congress write, and the public accept, laws that facilitate such abuse in any sector, especially national security?

We explore the logic of different legislative choices through a game theoretic tool known as mechanism design. Mechanism design allows us to consider how different legislative choices (that is, setting the rules of the game before it is played) influence the strategic incentives of whistleblower behavior (who plays the game once the rules are set). In this way, our paper adopts the strategic approach that is common in studies of oversight from Political Science while focusing our attention on the actors that legal scholars are typically interested in, namely the legislature and the whistleblower. We now describe the incentives and strategic options available to these actors.

2.1 Whistleblowers

Existing research identifies two primary reasons why someone might become a whistleblower: altruism and private gain. Which of these factors is more salient depends on the individual. Altruism in this context refers to "an individual's orientation to deliv-

[6]See also (Sagar, 2013, 118).

ering services to people with a purpose to do good for others and society" (Caillier, 2017, 812). Some whistleblowers display high levels of pro-social attributes, which are typically associated with a public service orientation. These whistleblowers care less about how wrongdoing is exposed and care more about how it ends. That is, they benefit when wrongdoing stops.[7] Whistleblowers motivated by altruism may still go public with their allegations if they fear that there is no other path. But their target audience is Congress or other actors with the power to end executive abuse.

Whistleblowers may also accrue private benefits by coming forward. These include emotional benefits derived from moral narcissism (Sagar, 2013, 151); the desire for fame; or the desire to harm employers and colleagues (Near and Miceli, 1996, 509). They also include financial or professional rewards. Public sector employees may allege wrongdoing—real or perceived—in an effort to try to capitalize on legal protections that prevent them from getting fired. Whistleblowers motivated primarily by private benefits do not care if wrongdoing is actually taking place or, in the event it is, that it stops. They are motivated simply by the perks they accrue by alleging wrongdoing. Their benefit comes simply from revealing information and collecting rewards.

In addition to the incentives whistleblowers have for coming forward with allegations of wrongdoing, they must also consider the costs they will face for doing so. The most common type of cost they face is reprisals from their employer and colleagues.[8] This can take many forms. The most obvious is being fired. But retaliation can also be informal, ranging from social ostracization to being blacklisted from employment opportunities,

[7]This is not to say that altruism always leads to truthful allegations. In some cases, people may be motivated by altruism might still blow the whistle because they misunderstand the situation they are in. According to Near and Miceli (2008, 276), employees "may complain in cases where it is not warranted. For example, they may interpret an organization's non-compliance with a specific rule to constitute true wrongdoing, when in fact it is used as a 'workaround' to make sure the job gets done."

[8]There are others as well. For example, Ellsberg (2010) discusses the psychological disincentives of coming forward in the national security context after taking secrecy oaths.

forcing them out of their profession (Near and Miceli, 2008, 267; Sagar, 2013, 6).

2.2 The Legislature

We think about the legislature as the actor that establishes the rules of the game before executive abuse occurs and whistleblowers decide to step forward. In the U.S., this is Congress.[9] Congress has two main levers it can manipulate that impact the costs and benefits facing whistleblowers. First, Congress can manipulate the private costs and benefits that whistleblowers face. They can reward whistleblowers through safeguards against workplace reprisals such as losing one's job. Depending on the allegation, Congress can also financially reward whistleblowers by providing "bounties"—that is, monetary compensation—for stepping forward with allegations that result in the government recovering funds from tax evasion schemes and the like (Tily, 2015, 1203). Congress can also impose costs on whistleblowers. They can fail to protect whistleblowers by withholding safeguards against employer-driven reprisals or punishing them directly by making it illegal to reveal information. As discussed above, existing laws raise the benefits for every sector except national security where laws raise costs.

Second, Congress can manipulate how whistleblowers' allegations are vetted. Specifically, Congress can write laws wherein whistleblowers' claims are investigated by an independent entity that is external to the executive or by an office or agency that is under the purview of the executive. Congress can also write laws that determine whether subsequent adjudication of an allegation or claims of reprisals will be heard entities in the executive branch or will be subject to some form of external review like a court.

[9]Our theory is different from other theories about oversight that conceptualize Congress as a strategic actor who can investigate and punish the executive. We analyze Congress as law writers that set the rules of the game before it is played. We accept that they may perform the investigative and oversight functions that others emphasize (although they may also contract those out).

Again, as noted above, the existing laws in the United States are such that independent vetting of allegations and reprisals only happen in non-national security contexts.

3 Theory

We want to study how oversight organizations can obtain quality information regarding violations of protocol, such as Congress discovering executive abuse. The method we examine is the use of whistleblowers. Because oversight organizations can change the incentives whistleblowers face, we adopt an institutional design approach. From this perspective, the core challenge is whether a principle (the oversight organization) can construct an incentive structure such that its agent (the whistleblower) only reveals true and credible information. As such, we ought to investigate the broad incentive compatibility constraints that induce a whistleblower with real grievances to come forward while convincing a whistleblower without legitimate grievances to stay silent. This may prove difficult because—staying true to the informational environment—the institutional designer can only condition incentives based on the information it knows.

Although this approach keeps the framework general, we still must define the whistleblower's payoffs to develop the model. Her utility has two components. First, she receives an ego payoff. This captures the value of being seen as the individual who did the morally right thing by stepping forward to expose wrongdoing (Alford, 2001). Let $e(\phi, V, I)$ model the ego value for the whistleblower. The parameter $\phi \in [0, 1]$ represents the belief that the information is real, which will form endogenously through the actions. Meanwhile, the parameter $V > 0$ reflects the substantive importance of the issue area. Finally, I is an indicator function that takes on 1 when the information is in the public interest and 0 when the information is false or irrelevant.

We make the following assumptions about the ego function. First, $\frac{\partial e}{\partial \phi} > 0$; that is, the whistleblower's utility strictly increases in the public's belief regarding the veracity of the information regardless of the actual truth. This reflects how, all else equal, whistleblowers prefer having the public believe her claims. It also captures how the public might take greater interest in the whistleblower's actions and enhance her reputation if people perceive her information to be truthful and credible.

Second, there exists a critical value $\phi^* < 1$ for which $\frac{\partial e}{\partial V} > 0$ for all $\phi > \phi^*$ and $\frac{\partial e}{\partial V} < 0$ for all $\phi < \phi^*$ for $I = 0$. This has a lot to unpack. The former condition means that, if the public is sufficiently convinced of the claim, the whistleblower's ego payoff increases in the importance of the issue area regardless of the actual truth. The latter condition implies that if the public is sufficiently skeptical of the claim, the ego payoff for a false issue area decreases in the importance of the issue area. For example, holding fixed the public's complete disbelief, a low-level accusation will receive less negative attention than a high-level accusation. Thus, the whistleblower internalizes more embarrassment in the latter case.

Finally, let $e(\phi, V, 1) > e(\phi, V, 0)$ holding fixed any values of ϕ and V. That is, keeping the public's belief and the importance of the issue area constant, revealing public-interest information gives the whistleblower a greater payoff than revealing unimportant or fabricated information. To motivate this, hold fixed an individual acting as a potential whistleblower. Suppose that person has a worthy revelation. In addition to whatever attention she would receive by coming forward regardless of the truth, she contributes to improving good governance. And aside from being believed, the utility function can include a bonus for coming forward with true information such as having fulfilled her moral duty.

In addition to the ego payoff, coming forward also entails disincentives $c(\phi) > 0$

regardless of all other factors. This represents the general hardship whistleblowers face by coming forward with any information whatsoever. Greater protections for whistleblowers imply a lower c value. Note that because it is a function of ϕ, it also allows us to capture any financial incentives a whistleblower receives based on verified information. We restrict attention to functions where $c'(\phi) \leq 0$, meaning that punishments become weakly lighter as the belief that the information is genuine increases. Because the inequality is weak, the function does not imply that incentives and punishments change based on the belief. We could, for example, allow for trivial functions like $c(\phi) = c$, where c is some constant.

To explore the importance of verifiability, let $t \geq 0$ represent the government's investigative transparency. Investigative transparency determines two parts of the incentive structure. First, let $p_T(t) \mapsto [0, 1]$ represent the function that maps a level of investigative transparency to the probability that Nature reveals the accusations are true following a genuine whistleblower coming forward. Similarly, define $p_F(t) \mapsto [0, 1]$ as the function that maps a level of investigative transparency to the probability that Nature reveals the accusations are false following an insincere revelation. Let $p_T(0) = p_F(0) = 0$, meaning that an institution with no investigative transparency implies no revelation. We also assume that $\frac{dp_T}{dt}, \frac{dp_F}{dt} \geq 0$, meaning that greater investigative transparency can only make revelation of the reality of the situation more likely. The weak inequality allows us to investigate especially difficult issue areas where investigative transparency has no effect on verification.

Putting everything together, the overall payoff for a genuine whistleblower is $p_T(t)(e(1, V, 1) - c(1)) + (1 - p_T(t))(e(\phi, V, 1) - c(\phi))$.[10] Meanwhile, the overall payoff for an insincere

[10]The first term substitutes $\phi = 1$ because of the player's type. Similarly, the first term in an insincere whistleblower's payoff substitutes $\phi = 0$.

whistleblower coming forward is $p_F(t)(e(0,V,0)-c(0))+(1-p_F(t))(e(\phi,V,0)-c(\phi))$. We standardize the payoff for staying silent at 0.

3.1 Incentive Compatibility Constraints

Per the earlier substantive discussion, policymakers have two levers at their disposal to influence whistleblowers: investigative transparency and disincentives. Our central question is whether policymakers can choose a level of investigative transparency and a disincentives mapping such that genuine whistleblowers come forward and disingenuous ones do not. The following proposition begins our discussion with a positive existence result:

Proposition 1. *For all parameters, there exists a value of t and a function $c(\phi)$ such that genuine whistleblowers reveal information and disingenuous whistleblowers do not.*

Proposition 1 says something encouraging. Suppose that we only want genuine whistleblowers to come forward. No matter the circumstances, we can find a set of laws that govern investigative transparency and disincentives that guarantees the desired outcome. That is, observers can be confident that public interest infractions will be revealed, and that the revelations they see are genuine.

Demonstrating the claim requires checking the incentive compatibility constraints. First, consider the genuine whistleblower. She is willing to come forward if:

$$p_T(t)(e(1,V,1)-c(1))+(1-p_T(t))(e(\phi,V,1)-c(\phi))\geq 0$$

If the types separate as desired, the observer can perfectly update their information regardless of Nature's revelation. This is because, for these separating strategies, only

genuine whistleblowers come forward. Thus, even if Nature does not verify the accuracy of the claim, the whistleblower must have genuine public-interest information because the disingenuous whistleblower remains silent. This implies that $\phi = 1$. Making that substitution generates:

$$p_T(t)(e(1,V,1) - c(1)) + (1 - p_T(t))(e(1,V,1) - c(1)) \geq 0$$

$$c(1) \leq e(1,V,1) \tag{1}$$

An interesting implication follows: the rate of verification for true claims has no bearing on the design. If the designer wants to elicit the desired strategies, she must use the other tools at her disposal.

Now consider the disingenuous whistleblower. Keeping her silent requires:

$$p_F(t)(e(0,V,0) - c(0)) + (1 - p_F(t))(e(\phi,V,0) - c(\phi)) \leq 0$$

We can again rewrite the second term. In a separating equilibrium, if the whistleblower without real information were to deviate, she would be fully believed. Substituting $\phi = 1$ once more yields:

$$p_F(t)(e(0,V,0) - c(0)) + (1 - p_F(t))(e(1,V,0) - c(1)) \leq 0 \tag{2}$$

$$c(1) \geq \frac{p_F(t)(e(0,V,0) - c(0))}{1 - p_F(t)} + e(1,V,0) \tag{3}$$

To obtain the desired goal, the designer simply needs to choose values for t, $c(0)$, and $c(1)$ that simultaneously satisfy Lines 1 and 3.[11]

[11]Thus, the disincentive function $c(\phi)$ necessary to obtain separation boils down to picking just two

Given so much control over the situation, it might not be surprising that the designer can elicit separation under some circumstances. However, Proposition 1 states that the claim is universal. This includes circumstances that seem stacked against genuine revelation. For example, suppose that $p_F(t) = 0$ for all t—that is, no matter the reforms to investigative transparency, no amount of verification is possible. Put yet another way, the government cannot prove that something did not happen. Then we can rewrite Line 3 as:

$$c(1) \geq e(1, V, 0) \tag{4}$$

Stringing together Lines 1 and 4, we can still obtain the desired outcome by choosing a $c(1)$ such that:

$$c(1) \in [p_F(t)e(0, V, 0) + (1 - p_F(t))e(1, V, 0), e(1, V, 1)] \tag{5}$$

For an institutional designer to have the capability to choose such a $c(1)$, the lower bound must fall below the upper bound. Thus, a mechanism designer can induce separation for all $p_F(t)$ if $e(0, V, 0) \leq e(1, V, 1)$ and $e(1, V, 0) \leq e(1, V, 1)$. The latter is true by the earlier assumption that whistleblowers earn a greater benefit from revealing a genuine infraction than by making a disingenuous claim, all else equal. The former is true because $e(0, V, 0) < e(1, V, 0)$ due to the assumption that the whistleblower's utility strictly increases in the belief that the information is true. As such, values for $c(1)$ exist that fulfill the requirements.

values: $c(0)$ and $c(1)$.

3.2 Tradeoffs

Existence of incentive structures that induce the desired behavior is only one part of the institutional design story. We should also want to know how particular incentives trade off against one another. Given the above substantive discussion, one interesting question is how the designer must adjust the other incentives if it wishes to lower investigative transparency. The following proposition addresses that:

Proposition 2. *Suppose that greater investigative transparency reveals more disingenuous information (i.e.,* $\frac{dp_F}{dt} > 0$*) and the mechanism designer lowers investigative transparency levels. Then it must weakly increase the disincentives (i.e.,* $c(0)$ *or* $c(1)$*) to maintain the disingenuous type's compliance.*

We can observe this by examining Line 2. The derivative of the function with respect to t is $p'_F(t)(e(0,V,0)) - c(0) - (e(1,V,0) - c(1)))$. Because $e(0,V,0) < e(1,V,0)$ and $c(1) \leq c(0)$, the function decreases in t. Line 5 showed that a range of values permits separation. Thus, one of two things is true about decreasing investigative transparency. If the decrease is marginal and the disingenuous type's condition was not binding, then separation still works without any further changes. But if the increase is sizable or the condition was binding, then the designer must do something to compensate. The two levers it has at its disposal are altering the disincentives $c(0)$ and $c(1)$. Both decrease the disingenuous type's utility and thus work to offset the problem. Note further that if there were some limits to punishment and the designer insists on low investigative transparency, $c(1)$ must remain high. This is because $c(0)$ only has so much effect when Nature rarely reveals the disingenuous claim. Perversely, keeping disincentives for genuine whistleblowers high keeps disingenuous whistleblowers in line.

Consider also how the investigative transparency tradeoff depends on the issue area

at stake. Our model operationalizes the value of that issue area with V. We observe that the designer must be careful with low investigative transparency and high stakes:

Proposition 3. *Suppose the mechanism designer wishes to implement sufficiently low investigative transparency. Then as the saliency of the issue area increases, the mechanism designer must weakly increase the disincentives (i.e., $c(0)$ or $c(1)$) to maintain the disingenuous type's compliance.*

Again, the proof for this comes from examining Line 2. The derivative of the function with respect to V is $p_F(t)\left(\frac{\partial}{\partial V}e(0,V,0)\right)+(1-p_F(t))\left(\frac{\partial}{\partial V}e(1,V,0)\right)$. The former partial derivative is negative—when no one believes the whistleblower, increasing the saliency of the issue area causes more embarrassment. The latter partial derivative is positive—when everyone believes the whistleblower, increasing the saliency of the issue area bestows greater pride. The derivative of the function is a convex combination of the two, determined by t. Thus, sufficiently low investigative transparency suppresses p_F, thereby making the total derivative positive. If the change is large enough, Line 2 no longer holds, and so the disingenuous type fails to comply. The designer must do something to compensate, and increasing the disutility for coming forward serves that purpose.

However, note that Proposition 3 indicates that this logic does not apply globally. Although sufficiently low values of p_F guarantee the above incentives, it is possible the institutional designer can *reduce* disincentives as the issue area becomes more important if p_F is high. Imagine that $e(0,V,0)$ is negative. That is, the whistleblower suffers embarrassment when the public knows that she is disingenuous. Increasing the value of the issue area exacerbates that embarrassment. Given that, suppose investigative transparency is high and will therefore often reveal the disingenuous accusation. The

extra embarrassment for making a claim overrides the additional praise that she could earn by deceiving the public. Consequently, the institutional designer could reduce $c(0)$ or $c(1)$ under these circumstances and still induce honest revelations.

3.3 Empirical Expectations

Bringing the model back to our substantive interests, the results generate two predictions about the designer's choices and how whistleblowers respond to them. First, imagine that the oversight organization is dealing with a high saliency subject area. Further, suppose it determines that it wants to induce honest revelation but also wants to maintain low investigative transparency. Then the designer must not provide great protections for whistleblowers. If they did, the disincentives for coming forward would be low. The opaque verification system prevents the course of investigation from outing disingenuous claims, and so those disingenuous types have incentive to steal the limelight. Instead, we would expect to see the designer offer little quarter to whistleblowers.

The second expectation shifts focus to genuine whistleblowers. If the institutional designer sets the incentives right, they should internalize how the downside risks of coming forward dissuade disingenuous revelations. In turn, they should anticipate that the audience will believe the sincere accusations they bring to light.

We find evidence for both implications in the substantive record we discuss below.

4 Evidence

We validate our theory using qualitative evidence from United States whistleblower reform efforts and whistleblower behavior. Many modern democracies have whistle-

blower laws that exempt national security professionals.[12] We focus on the U.S. for two reasons. First, it is an important case. The U.S. has the largest national security apparatus of any modern democracy. Thus, there is more opportunity for the president to abuse secrecy for his own ends. Second, there is lots of existing discussion of U.S. whistleblowers laws. The U.S. was the first to adopt whistleblower protections and serves as a template for many democracies. Recognizing the U.S. as a legal innovator, most of the legal and policy reporting on whistleblowers focuses on the U.S. case.

We report evidence on our two main actors. First, we analyze Congressional debates on U.S. whistleblower legislation over the last 40 years. We start with the establishment of whistleblower protections that exempted national security professionals (1978) then investigate the repeated, and largely failed, reform efforts to extend additional protections to them in the ensuing years (1998, 2012, 2017). Second, we analyze the case of Thomas Drake—a whistleblower from the National Security Agency that exposed waste, fraud, and abuse—in detail, relying on a semi-structured, in-person interview.

4.1 The Designer: Whistleblowing Reform in the United States

Congress has long recognized that existing laws do not provide safe, external channels for national security whistleblowers to lodge allegations of wrongdoing or provide real protections from reprisals. In introducing the Whistleblower Protection Enhancement Act to Congress in 2009, for example, Senator Daniel Akaka made clear what he wanted to achieve. After praising whistleblowers' role in "alerting Congress and the public to government wrongdoing and mismanagement, protecting our civil rights and civil liberties, helping to keep us safe, and rooting out waste, fraud, and abuse," he conceded that "[f]or too long, national security whistleblowers have not had secure avenues to

[12]For example, Australia, Sweden, the UK, Germany all have similar laws.

disclose government waste, fraud, abuse, and mismanagement. Some undoubtedly have stayed quiet, while some have leaked classified information to the media. We must ensure that there are secure channels to bring problems in the Federal government to Congress's attention" (Akaka, 2009). The legislation that passed did no such thing.

Our theory helps explain a disjuncture in what legislators viewed as the core problem of oversight each time they have introduced revised whistleblower protection laws and the inevitable dilemma that eventually prevents them from passing meaningful reform. Congress typically introduces new legislation because they believe that the existing ones on the books have not struck the correct balance between executive privilege in national security and Congressional oversight. As Congressman Braley explained at one point, "[i]t is important that Federal workers who specialize in national security issues have the ability to disclose the information about government wrongdoing to Congress. These workers need to know that they have access to a safe harbor where information will be fully investigated and appropriately safeguarded" (House of Representatives, 2007). Their reform efforts are specifically designed to redress this perceived imbalance.

But in thinking through the implications of reform, they come to realize that the information problems are quite complex. From the executive's point of view, it is not a question of whether the government should be subject to some form of accountability in the event that they or one of their subordinates abuse power. When the initial version of the WPEA was first introduced in 2007, the White House did not argue that they had absolute authority in national security and that they should be exempt from answering charges of waste, fraud, and abuse. Rather, they noted that in many cases whistleblowers do not have the full facts to determine if something wrong has transpired. Specifically, they held that "H.R. 985 would permit an employee to make an individualized determination without further review and perhaps without all relevant

information to disclose classified information" (Executive Office of the President, 2007).

Later in this memo, the White House argued that if whistleblowers could make allegations to Congress without receiving permission from those on the inside, it "could jeopardize not only national security programs, but also the security of the people involved in such programs." They reasoned that any law that facilitated external investigations of whistleblowers' allegations of wrongdoing and any subsequent reprisals were unacceptable. Independent adjudication of claims involving reprisals, for instance, would grant entities outside the executive branch the ability to review an enormous amount of highly classified information and present it to the merit board or in court. This "essentially would require the agency to choose between protecting national security information in court or conceding lawsuits" (Executive Office of the President, 2007). Because the executive was unwilling to resolve such matters openly, it "would require that the matter at issue be resolved in favor of the plaintiff" since the government would have to invoke the state secrets privilege, denying themselves any semblance of a defense. Consistent with our theory, the White House arguing that Congress should not create oversight mechanisms that allow for quality verification because the corresponding investigations would necessarily expose state secrets.

Congress sought to understand these nuances in great detail by inviting diverse stakeholders to testify at Committee Hearings on the implications of the WPEA in 2009. In one hearing, they heard testimony from Danielle Brian, the Executive Director of the Project on Government Oversight. Lobbying for enhanced protections, Brian argued that national security abuse remains high and one reason is that Congress is not aware when abuse happens. She reasoned that "[i]t is in the self-interest of the Congress, perhaps most importantly, to encourage those who are aware of wrongdoing to make their disclosures to Congress. Formal briefings from agency heads have their

place, but they do not truly inform the Congress of the real goings on at an agency." Brian went to argue that "[b]y not providing real protections for national security whistleblowers, we are actually driving them to the press and encouraging leaks of classified information. That is a lose-lose situation." This included the lack of access to jury trials (Subcommittee on Oversight of Government Management, 2009).

On the other side, the Committee heard testimony from Deputy Assistant Attorney General Rajesh De, a lawyer with extensive national security experience (Stanger, 2019, 117). De did not contest that Congress had a right to oversight per se. Rather, his argument centered on the implications of subjecting claims of reprisals to an external judicial process: "...[W]ith respect to national security whistleblowers, we think district court review and jury trials is particularly inappropriate in that context given the sensitive nature of the information at issue and the potential for wide-ranging disclosure in district court" (Subcommittee on Oversight of Government Management, 2009).

In the end, Congress sided with De. A report from the Committee on Homeland Security and Governmental Affairs in 2012 directly cited his testimony, noting that while "the Committee believes that the provisions on classified information contained in previous versions of the legislation are consistent with Congress's constitutional role, the Committee in the 111th Congress accommodated the Administration's concerns by adopting a compromise provision and the sponsors of the legislation in the 112th Congress included that compromise provision in S. 743," known as the WPEA (United States Senate, 2012).

Of note, fear of judicial review was the exact reason that the intelligence community was exempt from whistleblower protections when they were first conceived. When the Civil Service Reform Bill was initially being debated in 1978, a memo to the CIA Director warned: "This legislation is unacceptable" in part "because it would ... pro-

vide inadequate and insufficient protection for intelligence sources and methods... and result in the judicial review of any intelligence information involved in Agency personnel actions" (Acting Legislative Counsel, 1978, 2). Deputy Director of the CIA Frank Carlucci also argued at the time that the intelligence community should be exempted from the Special Counsel of the newly-created Merit Systems Protection Board because "because [they] would be given extraordinary powers to investigate allegations of reprisals against whistleblowers" (Carlucci, 1978, 2). Stansfield Turner, the CIA Director, echoed similar sentiments in a speech at the National Press Club: "I hope that you will recognize that when we balk, for instance, at disclosing all the secrets necessary to prosecute a case in court, we do not do so in an arbitrary manner" (Turner, 1978, 10).

As described above, many members of Congress prioritized oversight above sweeping executive privilege. These members could have still fought for whistleblower protections even if the government would not defended itself against allegations. Such protections would, in theory, increase whistleblower allegations in the national security space. The trouble is that an independent, judicial review was necessary to resolve a long-standing concern about providing protections to whistleblowers: the fear of false allegations.

Policymakers frequently worried about dishonest individuals exploiting whistleblower protections and undermining oversight in the process. During the debates over the 1978 Civil Service Reform bill, for example, the head of the U.S. Civil Service Commission warned: "Overbroad whistle-blower protection measures enhance existing incentives to use leaks as a bureaucratic political weapon against policies or practices with which an employee simply disagrees. This prospect is a very serious concern," he wrote, "and the sham whistle-blower tactic has already been used in at least one major instance" (Campbell, 1978, 7). More recently during debates over the WPEA in 2009, Representative Elijah Cummings recognized that "[o]ne of the arguments that opponents of

expanded whistleblower protection is that who will give a forum to people who just want to complain about management, or worse, are vindictive against their employer and want to get even" (House Oversight and Government Reform Committee, 2009).

In sum, members of Congress who wanted to increase oversight were unlikely to get it by simply extending protecting national security whistleblowers. The reason is that they would get many claims of waste, fraud, and abuse but not know which claims were genuine. If they cannot separate honest and dishonest claims, they cannot rely on these claims to enhance oversight because they do not know who to believe. Working backwards, Congress realized that facilitating external reporting, judicial review and external protection from reprisal would not benefit them. In the end, Congress chose not to facilitate external reporting, or external review of reprisal claims to national security whistleblowers. They allowed the executive to perform these functions in house.

4.2 The Whistleblower: The Case of Thomas Drake

Given these legislative conditions we might expect that national security professionals never come forward publicly and abuse largely goes unnoticed. After all, whistleblowers have an internal reporting mechanism through the Inspector General's Office where they can voice their concerns at low cost. If they go public, they face jail-time or worse. Yet since 2001, numerous whistleblowers have come forward publicly and faced criminal charges from the government.[13] Why would they ever subject themselves to such costs?

One possibility is that whistleblowers are motivated by the belief that the public has an inherent right to know about waste, fraud, and abuse (Halperin and Hoffman, 1976). We suggest a more nuanced strategic interaction that does not rely on this assumption. We argue that even if a whistleblower anticipates that going public will

[13]See https://wp.nyu.edu/whistleblowing/.

entail enormous costs, they may still do so because their willingness to incur costs them make their claims more credible and may ultimately end executive abuse. In contrast, if they report internally, abuse is unlikely to end. We verify our mechanism through process tracing a single case in detail: Thomas Drake's whistleblowing at the NSA.

We focus on Drake's whistleblowing for two reasons. First, he was a very senior national security professional. As someone with decades of experience in the military and the intelligence community, he was in a unique position to understand the consequences of his choices. Second, Drake's behavior does not easily fit our theory. It therefore provides a tough test. As we will see, Drake spent years voicing his concerns internally at the NSA and Department of Defense before going public. Because we claim that internal channels do not work, it is puzzling for us that he would try them. Further, Drake did not immediately release his name when he went to the press. Instead, he tried to remain anonymous. Our theory predicts that whistleblowers attach their name to the claims they make precisely because this is what makes them credible. Here again, it is puzzling for us that Drake would initially try to keep his identity anonymous.

Previous research on Drake provides useful context for our case. We know, for example, that in the 1990s the NSA started to develop an automated surveillance program, code-named Thinthread (Bamford, 2008, 44-47; Hillebrand, 2012, 698). Although it could not discriminate between American citizens and foreign nationals at the collection stage, it could encrypt Americans' communications unless a warrant was provided (Stanger, 2019, 126-127). In 2000, the NSA ceased its support for Thinthread.

In the wake of 9/11, the NSA had a renewed interest in automated surveillance. Instead of relying on Thinthread, the NSA Director Michael Hayden authorized the development of a different program: Trailblazer. Trailblazer was controversial because "[i]t entirely lacked the privacy protections that were built into Thinthread," was run

by private contractors, and cost significantly more (Stanger, 2019, 127-128). On top of all this, the White House authorized STELLARWIND which "authorized warrantless collection of metadata on U.S. phone calls." According to some legal analysts who have reviewed public information about these programs in hindsight this violated the Foreign Intelligence Surveillance Act (FISA) and the Fourth Amendment (Stanger, 2019, 130).

Our theory makes unique predictions about the costs and benefits whistleblowers anticipate before coming forward as well as their motivations for going public with their allegations rather than using internal channels. Existing accounts about Drake do not systematically address these dynamics. To get this information, then, we interviewed Drake in July 2019 about his decision to blow the whistle on these various activities.[14] We contacted him using the solicitation technique recommended by Peabody et al. (1990). We then used semi-structured techniques recommended for elites interviews that validate causal mechanisms (Aberbach and Rockman, 2002; Delaney, 2007; Harvey, 2011). Among other things, these techniques help address response bias and social desirability bias and ensure that the hypotheses can be falsified. Appendix C contains more information about our design choices[15] and briefly examine the dynamics of two additional whistleblowers, one from the Cold War period (Ellsberg) and one from the period after Drake (John Kiriakou) to validate that our theory is broadly applicable.

Our interview focused on two questions to test our mechanism: (1) Why did Drake start with internal reporting and then switch to external reporting? and (2) Why did Drake reveal his identity to reporters rather than provide anonymous information?

[14] A third component of Drake's whistleblowing related to what he saw as the NSA's failure to share relevant information that might have prevented the 9/11 attacks.

[15] We repeated the same process in our other elite interviews with other national security whistleblowers.

4.2.1 Internal Reporting

Starting in 2001, Drake raised concerns about the 9/11 intelligence failure, Trailblazer, and mass surveillance internally, first with NSA leadership and then with Inspectors General at the NSA and Department of Defense. He also provided information to the House and Senate Intelligence Committees, but did not provide them with classified details (Delmas, 2015, 99). From the perspective of our theory, Drake's decision to use internal reporting mechanisms is surprising because they are unlikely to end perceived abuse. Of course, whistleblowers do not want to go to prison. If internal channels effectively stopped abuse, even whistleblowers motivated by altruism would use them.

To understand this decision, we asked Drake why he turned to internal channels first. One reason he gave is supportive of the notion that whistleblowers are motivated in large part by public service motivations. In particular, Drake appreciated the need to maintain secrecy in the national security space. He wanted to expose wrongdoing and have it stop but did not want to unnecessarily reveal classified information. Drake understood that the rules were put in place to protect properly classified information. In his telling, it was right to start by "follow[ing] the rules. The rules were that if you suspected wrongdoing, there were internal channels within the Agency, and then there were actually other channels that included Congress and the Department of Defense."[16] Parenthetically, this helps us rule out the notion that Drake blew the whistle because he thought the public had an intrinsic right to know. To the contrary, his decision to start internally suggests that he was most interested in affecting policy change.

Another plausible reason why Drake pursued internal channels before going public with his allegations was timing. In particular, he was one of the first national security whistleblowers to come forward following the reforms in the late-1990s mentioned above.

[16]Interview with authors, July 16, 2019.

As such, the new reporting mechanisms created as a result of that legislative reform had not been tested. It may not have been obvious to Drake at first that they would not work. As he put it, the internal whistleblowing he did was done "in accordance with the Intelligence Community Whistleblower Protection Act of 1998 (ICWPA)."[17]

Partially as a result of Drake's internal whistleblowing, the IG's office produced a report that raised serious concerns with Trailblazer, concluding that it had wasted public funds. The program was eventually shut down (Mayer, 2011). But consistent with our theory and the literature on the legal aspects of whistleblowing, these reports had little effect on the executive's broader counter-terrorism policies, including mass surveillance. There are several reasons for this. First, internal investigators could not complete a thorough audit because the NSA and the executive put extraordinarily high classification markers on the parts of the programs that were of most concern to Drake. Second, the IG could not effect change on its own. As Drake put it, "the problem in all of this is that there's no teeth. The IG does not have the ability to shut down programs, they can only make recommendations. That's left up to others."

Finally, Congress is significantly constrained in its ability to gain complete access to relevant information and in terms of enforcement.[18] Moreover, effective oversight was impeded by the close relationship between Hayden and the Chair of the Intelligence Committee at the time, who was a strong supporter of the Bush Administration's expanding national security program.[19] According to Drake, Hayden would often say "he didn't care about any staffer, all I care about is the Chair, which in this case was

[17]Correspondence with Drake, September 13, 2019.

[18]The recent standoff between the IG for the Director of National Intelligence and Congress over a whistleblower complaint involving President Trump is instructive. In particular, the IG's unwillingness to send the report over the intelligence committees in Congress illustrates the current power imbalance. See https://www.nytimes.com/2019/09/21/us/politics/trump-whistleblower-complaint.html.

[19]On capture of Congress by the executive, see Sagar (2013, 134). and Stanger (2019, 168-169).

Porter Goss. That's the only person he cared about, because he had enormous power."

Whistleblowers since Drake have learned from his experience not to use internal channels. For example, we asked John Kiriakuo, who exposed the existence of a CIA torture program in 2007, why he went directly to the press rather than trying out internal reporting channels first. His rationale directly referenced the Drake case:

> Look at Tom Drake... He went to his supervisor, he went to the IG, he went to the General Counsel, he went to the Pentagon IG. The Pentagon IG actually destroyed the evidence that he took out with him. And now the IG faces criminal obstruction charges. And then he went to the House Oversight Committee, and they charged him with nine felonies, including seven counts of Espionage and two counts of theft of government property, which was the information he took out in his brain. I followed this case, and I thought, my god, if I go to the Oversight Committee, they're going to charge me with Espionage. If I go to the IG, they're going to charge me with Espionage.[20]

4.2.2 Going to the Press

By 2005, it was clear to Drake that internal reporting would not alert the right people to affect change. At that point he considered two options: go to the press or do nothing. "After I had done my final whistleblowing within the system," Drake told us during the interview, "I began to consider what would it look like, knowing it would end my career and worse - worse being exactly what happened to Ellsberg. I already knew that. It was not like you were so naive to think you could get away going to the press. I was

[20]Interview with authors, May 9, 2019.

not going to get away with going to the press. Especially in this post-9/11 world."[21]

As alluded to, Drake was well aware that going to the press with his allegations entailed significant risks: "To go to the press, it's not just crossing the Rubicon. In fact, it's more appropriate to say you're going to touch the third rail. And that third rail is going to give you pretty severe shock... I knew that by going to the press that there was no question that my career would be over. And the reason for that is that if I went to the press, I'd be going in an unauthorized manner." Worse still, he knew that "I could have ended up, or they could charge me with espionage. I could end up in prison for the rest of my life." Nevertheless, the reason he was willing to expose himself to these steep costs was that he "wouldn't have been able to live with [himself] for the rest of [his] life if he hadn't done anything." His goal was to provide information that "would be made public and the government would then have to deal with it. And it would now be out in the open, unlike all the clamps they put in place within the system and hid it."[22] And so, he eventually approached the *Baltimore Sun* with his allegations.

Of course, Drake could have reduced the risk of facing severe punishments by leaking information anonymously. In fact, Drake first toyed with the idea of whistleblowing under cover. Initially, he reached out to reporter Siobhan Gorman anonymously to establish a secure contact in 2005. But within a year he decided to dispense with anonymity. In 2006, he walked into the Baltimore Sun and sat down on the record for several in-person interviews about Trailblazer and similar surveillance programs.[23]

Importantly for our theory, Drake knew that exposing his identity to a reporter was extremely risky. However, he believed that doing so was necessary for two reasons. First, he said, "For me to provide the fuller context for everything I had revealed, all

[21]Interview with authors, July 16, 2019.
[22]Interview with authors, July 16, 2019.
[23]Interview with authors, July 16, 2019.

unclassified, to that reporter," he said, "I would actually have to meet her." Revealing his identity provided the necessary context, namely the fact that he was a senior-level executive at NSA and was read into the programs he was blowing the whistle on.[24]

Second, Drake believed that exposing himself to risk would raise the credibility of his story. When asked whether meeting Gorman in person increased the credibility of his story, he confirmed that this was indeed the case.[25] If he was willing to run these severe risks it was clear that he thought the abuse was so severe it was worth it. In his view, this was the only way to make clear to the public and Congress that something was going on that was worth investigating. Equally important, Drake acknowledged that if he opted not to go public and to remain quiet or anonymous, it would have impeded any prospect that the mass surveillance program and other abuses would end. During our interview, Drake described his decision to go to the Baltimore Sun as "my final service to the nation."[26] In his view, the costs he incurred from going public with the program were enormous. However, incurring them was necessary to end wrongdoing.

5 Conclusion

This article set out to answer why national security whistleblowers in advanced democracies like the U.S. are punished for coming forward whereas whistleblowers in other sectors are protected and rewarded. To answer this question, we relied on mechanism design. We argued that Congress faces a dilemma between secrecy and oversight when crafting whistleblower legislation in the national security space. Protecting whistleblowers without the ability to credibly verify allegations—which Congress has been

[24]Interview with authors, July 16, 2019.
[25]Interview with authors, July 16, 2019.
[26]Interview with authors, July 16, 2019.

reluctant to do—is not possible since it would create perverse incentives for individuals with false or misleading claims to come forward. Interestingly, however, while national security whistleblowers are exempt from protections for this reason, the existence of harsh punishments inadvertently renders the claims of those who do make allegations more credible. Only individuals motivated by altruism are willing to come forward. We tested this argument by exploring the trajectory of reforms to whistleblowing protection laws in the U.S. and through an interview with NSA whistleblower Thomas Drake.

A number of interesting implications follow from the theory and evidence presented here. First, protecting whistleblowers in the national security sector is possible, but not without fundamental changes to the status quo. As we demonstrated, the existing state of affairs is such that Congress and the public accept that thoroughly vetting whistleblowers' allegations is simply too expensive. In other words, there is a general unwillingness to require that claims be adjudicated outside the executive branch for fear that sensitive national security information could be unnecessarily compromised. Protecting whistleblowers would therefore require a radical change in how classified information is handled in such cases; namely through some kind of external review.

Another interesting implication of this article has to do with the kinds of allegations of waste, fraud, and abuse that see the light of day. Although we do not theorize it directly, it is plausible that the high costs associated with coming forward mean that there may be many instances of misconduct which are never exposed, leaving only the most egregious episodes come to the fore.[27] Prospective national security whistleblowers, even those motivated by altruism, may be unwilling to face jail time and steep financial penalties for exposing minimal or middling forms of executive wrongdoing. Evaluating

[27]On how the prospect of retaliation can disincentivize some from whistleblowing, see (Sagar, 2013, 138).

whether this is indeed the case would be a fruitful avenue for future research.

References

Aberbach, Joel D. and Bert A. Rockman. 2002. "Conducting and Coding Elite Interviews." *PS: Political Science & Politics* 35(4):673–676. 27

Acting Legislative Counsel. 1978. "Civil Service Reform and Whistle-Blowing.".
URL: *https://www.cia.gov/library/readingroom/docs/CIA-RDP81-00142R000400010016-3.pdf* 24

Akaka, Daniel. 2009. "Hearing on the Whistleblower Protection Enhancement Act." *Homeland Security and Governmental Affairs* .
URL: *https://www.hsgac.senate.gov/subcommittees/oversight-of-government-management/majority-media/hearing-on-the-whistleblower-protection-enhancement-act* 21

Alford, C. Fred. 2001. *Whistleblowers: Broken Lives and Organiz.* Ithaca: Cornell University Press. 11

Asenbaum, Hans. 2018. "Anonymity and Democracy: Absence as Presence in the Public Sphere." *American Political Science Review* 112(3):459–472. 1

Bamford, James. 2008. *The Shadow Factory: The Ultra-secret NSA from 9/11 to the Eavesdropping on America.* New York: Anchor Books. 26

Beim, Deborah, Alexander V. Hirsch and Jonathan P. Kastellec. 2014. "Whistleblowing and Compliance in the Judicial Hierarchy." *American Journal of Political Science* 58(4):904–918. 5, 6

Beim, Deborah, Alexander V. Hirsch and Jonathan P. Kastellec. 2015. "Signaling and Counter-Signaling in the Judicial Hierarchy: An Empirical Analysis of En Banc Review." *American Journal of Political Science* 60(2):490–508. 5

Bellia, Patricia L. 2012. "WikiLeaks and the Institutional Framework for National Security Disclosures." *The Yale Law Journal* 121(6):1448–1527. 6

Caillier, James Gerard. 2017. "Public Service Motivation and Decisions to Report Wrongdoing in U.S. Federal Agencies: Is This Relationship Mediated by the Seriousness of the Wrongdoing." *American Review of Public Administration* 47(7):810–825. 9

Campbell, Alan K. 1978. "Memo from Alan K. Campbell to Abraham Ribicoff.".
URL: *https://www.cia.gov/library/readingroom/docs/CIA-RDP81-00142R000400010016-3.pdf* 24

Carlucci, Frank C. 1978. "Memo from Frank C. Carlucci to Robert N.C. Nix.".
URL: *https://www.cia.gov/library/readingroom/docs/CIA-RDP81-00142R000400010016-3.pdf* 24

Carnegie, Allison and Austin Carson. 2018. "The Spotlight's Harsh Glare: Rethinking Publicity and International Order." *International Organization* 72(3):627–657. 4

Carnegie, Allison and Austin Carson. 2019. "The Disclosure Dilemma: Nuclear Intelligence and International Organizations." *American Journal of Political Science* 63(2):269–285. 4

Carson, Austin. 2018. *Secret Wars: Covert Conflict in International Politics.* Princeton: Princeton University Press. 5

Colaresi, Michael P. 2014. *Democracy Declassified: The Secrecy Dilemma in National Security.* Oxford: Oxford University Press. 2, 4, 5

Delaney, Kevin J. 2007. "Methodological Dilemmas and Opportunities in Interviewing Organizational Elites." *Sociology Compass* 1(1):208–221. 27

Delmas, Candice. 2015. "The Ethics of Government Whistleblowing." *Social Theory and Practice* 41(1):77–105. 28

DeVine, Michael E. 2019. "Intelligence Community Whistleblower Protections: In Brief." *Congressional Research Service* pp. 1–10. 8

Ellsberg, Daniel. 2010. "Secrecy and National Security Whistleblowing." *Social Research: An International Quarterly* 77(3):773–804. 1, 9

Executive Office of the President. 2007. "Statement of Administration Policy: H.R. 985 Whistleblower Protection Enhancement Act of 2007." *Office of Management and Budget* .
URL: *https://perma.cc/XHS4-YXLC* 22

Finn, Peter and Sari Horwitz. 2013. "U.S. Charges Snowden with Espionage." *Washington Post* June 21.
URL: *https://www.washingtonpost.com/world/national-security/us-charges-snowden-with-espionage/2013/06/21/507497d8-dab1-11e2-a016-92547bf094cc_story.html* 1

Fuller, Roslyn. 2014. "A Matter of National Security: Whistleblowing in the Military as a Mechanism for International Law Enforcement." *San Diego International Law Journal* 15(2):249–298. 1

Halperin, Morton H. and Daniel N. Hoffman. 1976. "Secrecy and the Right to Know." *Law and Contemporary Problems* 40(3):132–165. 25

Harvey, William S. 2011. "Strategies for Conducting Elite Interviews." *Qualitative Research* 11(4):431–441. 27

Hillebrand, Claudia. 2012. "The Role of News Media in Intelligence Oversight." *Intelligence and National Security* 27(5):689–706. 26

House of Representatives. 2007. "Whistleblower Protection Enhancement Act." *Congressional Record* .
URL: *https://www.congress.gov/congressional-record/2007/03/14/house-section/article/H2517-1* 21

House Oversight and Government Reform Committee. 2009. "Rep. Edolphus Towns Holds a Hearing on H.R.1507, The Whistleblower Protection Enhancement Act of 2009." *Congressional Quarterly* . 25

Joseph, Michael F. and Michael Poznansky. 2018. "Media Technology, Covert Action, and the Politics of Exposure." *Journal of Peace Research* 55(3):320–335. 5

Mayer, Jane. 2011. "The Secret Sharer: Is Thomas Drake an Enemy of the State?" *The New Yorker* May 23.
URL: *https://www.newyorker.com/magazine/2011/05/23/the-secret-sharer* 29

McCubbins, Mathew D. and Thomas Schwartz. 1984. "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms." *American Journal of Political Science* 28(1):165–179. 6

Moberly, Richard. 2012. "Whistleblowers and the Obama Presidency: The National Security Dilemma." *Employee Rights and Employment Policy Journal* 16(1):51–141. 1, 2, 5, 6, 7

Near, Janet P. and Marcia P. Miceli. 1996. "Whistle-Blowing: Myth and Reality." *Journal of Management* 22(3):507–526. 9

Near, Janet P. and Marcia P. Miceli. 2008. "Wrongdoing,Whistle-Blowing, and Retaliation in the U.S. Government: What Have Researchers Learned From the Merit Systems Protection Board (MSPB) Survey Results?" *Review of Public Personnel Administration* 28(3):263–281. 9, 10

Nielsen, Richard P. 2018. "Reformed National Security Internal Whistleblowing Systems and External Whistleblowing as Countervailing Ethics Methods." *Administration and Society* pp. 1–30. 6

O'Rourke, Lindsey. 2018. *Covert Regime Change: America's Secret Cold War*. Ithaca: Cornell University Press. 5

Papandrea, Mary-Rose. 2014. "Leaker Traitor Whistleblower Spy: National Security Leaks and the First Amendment." *Boston University Law Review* 94(2):449–544. 5, 7, 8

Peabody, Robert L., Susan Webb Hammond, Jean Torcom, Lynne B. Brown, Carolyn Thompson and Robin Kolodny. 1990. "Interviewing Political Elites." *PS: Political Science & Politics* 23(3):451–455. 27

Poznansky, Michael. 2019. "Feigning Compliance: Covert Action and International Law." *International Studies Quarterly* 63(1):72–84. 5

Sagar, Rahul. 2013. *Secrets and Leaks: The Dilemma of State Secrecy*. Princeton: Princeton University Press. 1, 2, 3, 5, 7, 8, 9, 10, 29, 33

Savage, Charlie and Alan Blinder. 2018. "Reality Winner, N.S.A. Contractor Accused in Leak, Pleads Guilty." *New York Times* June 26.
URL: *https://www.nytimes.com/2018/06/26/us/reality-winner-nsa-leak-guilty-plea.html* 1

Shane, Scott. 2013. "Ex-Officer Is First From C.I.A. to Face Prison for a Leak." *New York Times* Jan. 5.
URL: *https://www.nytimes.com/2013/01/06/us/former-cia-officer-is-the-first-to-face-prison-for-a-classified-leak.html* 1

Smith, Gregory L. 2019. "Secret but Constrained: The Impact of Elite Opposition on Covert Operations." *International Organization* 73(3):685–707. 5

Spaniel, William and Michael Poznansky. 2018. "Credible Commitment in Covert Affairs." *American Journal of Political Science* 62(3):668–681. 5

Stanger, Allison. 2019. *Whistleblowers: Honesty in America From Washington to Trump*. New Haven and London: Yale University Press. 1, 5, 7, 23, 26, 27, 29

Subcommittee on Oversight of Government Management. 2009. "Senator Daniel K. Akaka Holds a Hearing on S.372, the Whistleblower Protection Enhancement Act of 2009." *Congressional Quarterly* . 23

Tily, Stephen Coleman. 2015. "National Security Whistleblowing vs. Dodd-Frank Whistleblowing." *Brooklyn Law Review* 80(3):1181–1218. 1, 10

Ting, Michael M. 2008. "Whistleblowing." *American Political Science Review* 102(2):249–267. 5, 6

Turner, Stansfield. 1978. "Protecting Secrets in a Free Society.".
URL: *https://www.cia.gov/library/readingroom/docs/CIA-RDP88-01315R000300680016-1.pdf* 24

United States Senate. 2012. *Whistleblower Protection Enhancement Act of 2012: Report of the Committee on Homeland Security and Governmental Affairs.* Washington, D.C.: U.S. Government Printing Office. 23

Vladeck, Stephen I. 2008. "The Espionage Act and National Security Whistleblowing After Garcetti." *American University Law Review* 57(5):1531–1546. 1, 7

6 Appendix

6.1 Proof of Proposition 3

We wish to investigate when the lower bound of Condition 5 increases in V. Thus, we want to know the circumstances under which:

$$\frac{\partial}{\partial V}\Big(p_F e(0,V,0)) + (1-p_F)e(1,V,0)\Big) > 0$$

We can rewrite this as:

$$p_F\left(\frac{\partial}{\partial V}e(1,V,0) - \frac{\partial}{\partial V}e(0,V,0)\right) < \frac{\partial}{\partial V}e(1,V,0)$$

The e function increases in V when $\phi = 1$. However, we make no assumptions about the rate, nor do we assume a direction for $e(0,V,0)$. As such, $\frac{\partial}{\partial V}e(1,V,0)$ is positive but the rest is indeterminate. Consequently $\frac{\partial}{\partial V}e(0,V,0)$ could be greater than $\frac{\partial}{\partial V}e(1,V,0)$ or vice versa. In the first case, the inequality must hold because the left hand side is negative and the right hand side is positive. This corresponds to the case where increasing V requires additional punishments regardless of p_F.

If not, rearranging the inequality yields:

$$p_F < \frac{\frac{\partial}{\partial V}e(1,V,0)}{\frac{\partial}{\partial V}e(1,V,0) - \frac{\partial}{\partial V}e(0,V,0)}$$

A similar case to the first can also hold if $\frac{\partial}{\partial V}e(0,V,0)$ is positive. This implies that the right hand side exceeds 1, thereby ensuring that it is greater than the 0-to-1 constrained p_F. Again, the institutional designer's lower bound must increase as V increases in this case.

Finally, if $\frac{\partial}{\partial V}e(0, V, 0)$ is negative, then the right hand side forms a proper probability. If p_F is less than it, then the institutional designer must adjust c upward once more as V increases.[28] But if p_F is greater than it, the institutional designer can decrease c as V increases.

[28]Such a p_F must exist because the right hand side is strictly between 0 and 1 in this case.