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Note

***421 HONOR OR BETRAYAL? THE ETHICS OF GOVERNMENT LAWYER-WHISTLEBLOWERS**

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ABSTRACT

Whistleblowers in the Bush Administration have alerted the public to grave abuses of executive power in the wake of 9/11 that would have remained shrouded in secrecy but for these valuable leaks. However, the whistleblowers are vulnerable to criminal prosecution, adverse personnel actions, and in the case of government lawyers, professional ruin. I argue that disclosures of government wrongdoing in national security matters are so important to public discourse and policy-making that there must be better mechanisms for protecting these whistleblowers beyond the current statutory frameworks that exist. I examine how government lawyers in particular fall between the cracks of whistleblower protection laws and are further constrained by their professional ethical obligations. I propose a responsive yet responsible regime for handling national security whistleblowing that takes into account the unique position of government lawyers. Specifically, I call for the creation of a permanent Congressional committee to hear, investigate, and report to the public disclosures revealing government misconduct. I also propose changes to state and federal jurisprudence regarding the First Amendment rights of government lawyers to take into account the inherent value of informing the public. There are many very compelling reasons why we would not want to overprotect whistleblowers, but I argue that my proposal meets these critiques head on and creates a system that respects separation of powers, the rule of law, and the ethical foundations of the legal profession.

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