# Whats the Buzz AC

## Advantage

#### According to all known laws of aviation… Current whistleblower laws are not sufficient – empirics prove.

Devine 17 [Tom Devine (GAP Legal Director, and has worked at the organization since 1979), September 9th 2017, House Oversignt and Government reform Committee, SUBCOMMITTEE ON FEDERAL WORKFORCE, U.S. POSTAL SERVICE AND THE CENSUS on WHISTLEBLOWER PROTECTION SINCE PASSAGE OF THE WHISTLEBLOWER PROTECTION ENHANCEMENT ACT, <https://oversight.house.gov/hearing/five-years-later-review-whistleblower-protection-enhancement-act/> //KT]

#### The stark rise is OSC complaints illustrates another stark truth: retaliation has not decreased. It is a sad truth that the OSC’s track record of 5.2% corrective action reflects the best option. As a rule, employee rights under the Whistleblower Protection Act continue to be a mirage when agencies violate them. Whistleblowing is more dangerous than ever. Four primary causes are reviewed below. Administrative agency enforcement. Part of the reason is the enforcement agencies. Despite its intensified informal efforts, the OSC only has filed two formal corrective action complaints in whistleblower cases since 2011. Its failure to litigate almost at all weakens the terms of settlements it negotiates, and prevents victories from becoming case law with precedents. There has been a similar litigation vacuum for disciplinary actions, which are essential to deter reprisals. While the current OSC administration has obtained 84 disciplinary actions informally, it only has filed three formal disciplinary complaints. Discrete discipline simply does not have the same chilling effect on retaliation as visible punishment. Delays also have been a particular source of frustration. To illustrate, 5 USC 213 calls for 15 day OSC reviews of whistleblowing disclosures to determine if there is a substantial likelihood of misconduct and order an agency investigation, followed by a 60 day turnaround for agencies to report back. Admittedly, those time frames are unrealistic. But it took us over three years advocacy before the Office referred a disclosure of significant misconduct that was sustaining abuse of foster children. Another disclosure has been pending for nearly two years. The delays do not stop when the OSC makes up its mind. On the average, agencies take 387 days to turn in their 60 day investigative reports. The WPA’s disclosure channel is designed to spark timely reports that can make a difference about current events, not history lessons.8 The frustrations summarized above do not reflect bad faith by the OSC. They reflect the facts of life, and unavoidable trade-offs. Without an exponential increase in resources, the OSC cannot hope to provide timely action except in emergency scenarios, when it has acted impressively. More thorough review of cases and enfranchisement of whistleblowers inherently causes delays. Further, formal actions exhaust far more resources than conflict, and the OSC has chosen the tradeoff that helps the most whistleblowers for the buck. That is hard to disagree with. Positive or negative judgments about this Office do not change the facts of life, however. At best, the OSC never can or will be more than an anecdotal source of justice that can make impressive points. To consistently achieve the WPA’s promise, no remedial agency can be a substitute for credible due process. Unfortunately, whistleblowers are not getting it at the Merit Systems Protection Board. (MSPB) As a rule, decisions by Board Members have interpreted the WPA consistent with legislative intent and backed by well-reasoned legal analysis. They have been good faith, responsible stewards of the WPA. But the hearings are conducted by Administrative Judge’s (AJ) who have been openly hostile to the Act. In fact, they have been far more hostile even than the Federal Circuit Court of Appeals, whose rulings sparked passage of the WPA and WPEA to restore unanimously enacted rights gutted by judicial activism. Depending on the year, AJ’s rule against whistleblowers on the merits from 95-98% of decisions on the merits. Combined with the OSC’s 5% corrective action rate, this means whistleblowers do not have more than a token chance for justice.

#### Current rules in the USDA specifically are flawed and discourage the spread of unsavory information.

Fears, Daryl. (4/21/2017). Some USDA scientists say their work has been tampered with – for political reasons. *Washington Post.* Retrieved September 21, 2018, from https://www.washingtonpost.com/news/energy-environment/wp/2017/04/21/some-usda-scientists-say-their-work-has-been-tampered-with-maybe-for-political-reasons/?noredirect=on&utm\_term=.b5800918d044.

Now a recent survey of the Agriculture Department’s scientists by the agency’s inspector general has brought it back to the forefront. According to the survey’s findings, nearly 10 percent said their research has been tampered with or altered by superiors “for reasons other than technical merit,” possibly because of political considerations. Questions were submitted by the inspector general to more than 2,000 scientists in four branches of the department — the Agricultural Research Service, Forest Service, Economic Research Service and Natural Resources Conservation Service. The intent was to gauge their understanding of its Scientific Integrity Policy, which allowed them to complain if they felt their work was compromised. Nearly 40 percent didn’t bother to take the survey, according to findings released April 13. Of those who did, more than half said they didn’t know how to file a complaint and some said they didn’t do so because they feared retaliation. “You do not need to have many cases to create a strong chilling effect, and the current science climate inside USDA is quite nippy,” said Jeff Ruch, executive director of the Public Employees for Environmental Responsibility, which represented Lundgren.The USDA has said it doesn’t retaliate against any employee, and disputed Lundgren’s claim that he was targeted to suppress his science. Lundgren had been with the agency 11 years, ran his own lab with a staff and wrote a well-regarded book on predator insects, but his career began to fall apart when he published research that cautioned against the use of pesticides approved by the agency. In a Washington Post Magazine story about his case, Lundgren said he thought his downfall started in 2012 when he published findings in the Journal of Pest Science indicating that a popular class of pesticides, neonicotinoids, don’t improve soybean yields. He followed that the next year with a paper that said a new pest treatment called RNAi pesticides should trigger a new means of risk assessment. After the research drew national interest and a report on NPR, Lundgren said he was hauled into the office of a superior who told him for the first time that he shouldn’t talk to the media. After speaking to another news outlet about another research paper months later, Lundgren was suspended for unruly office behavior when he pretended to hump a chair. Later he was docked for filing an unsigned travel request and rushing off to an event. Other Agriculture Department scientists contacted by The Washington Post said they had done worse, such as not filing a travel request at all, and not faced a penalty. In the survey, 85 percent of the 1,300 scientists who responded said the Scientific Integrity Policy established to protect their work didn’t benefit them, or offered no opinion. Nearly 20 percent said they didn’t know the policy existed. A few scientists submitted unflattering comments about the agency’s attempt at integrity. “The SIP is kind of a nicety with no real meaning,” one said. “It has done nothing about the lack of scientific integrity exhibited by my station director,” another said. The SIP seems “designed to protect the agency only, not a code for individual scientists interacting with other scientists,” yet another said. The comments were anonymous.“Nothing has really changed,” another comment said, “because the SIP still provides managers with the ability to stop communication of anything they want. The wording has changed and sounds better, but reality has not changed.”

**USDA scientists, such as Lundgren, face retaliation and punishment if their work doesn’t reflect the agency’s best political interests.**
**Volk**, Steve. (2018). *Washington Post*. Retrieved 19 September 2018, from https://www.washingtonpost.com/lifestyle/magazine/was-a-usda-scientist-muzzled-because-of-his-bee-research/2016/03/02/462720b6-c9fb-11e5-a7b2-5a2f824b02c9\_story.html?noredirect=on&utm\_term=.51abcb49ac47 KT

In October, Lundgren [filed a whistleblower suit](https://www.washingtonpost.com/news/federal-eye/wp/2015/10/28/suspended-usda-researcher-alleges-agency-tried-to-block-his-research-into-harmful-effects-of-pesticides-on-bees-butterflies/) alleging that he was disciplined to suppress his science. The government says the suspensions had nothing to do with his research. Today, he is the most outspoken of several scientists who say they feel muzzled by the government. The lawyers who filed Lundgren’s suit allege that nine additional USDA scientists have been ordered to retract studies and water-down findings, or have faced discipline in retaliation for their work. They further allege that three of those scientists, beyond Lundgren, were also working on pollinator-related research. The USDA’s inspector general just announced an audit, to take place later this year, in response to the “significant volume” of complaints they’ve had on their office’s hotline, alleging scientific censorship on pesticides and other issues. This dynamic of government scientists claiming suppression extends across institutions. Just a few months ago, scientists at the National Oceanic and Atmospheric Administration [alleged](https://www.washingtonpost.com/news/federal-eye/wp/2015/11/24/standoff-over-government-climate-study-provokes-national-uproar-by-scientists/) that the House Science Committee, led by Chairman Lamar Smith (R-Tex.), was attempting to intimidate researchers who had produced data indicating that global warming hadn’t slowed. He believes the problem began in 2012, when he published findings in the Journal of Pest Science suggesting that a popular class of pesticides called neonicotinoids don’t improve soybean yields. He also served as a peer reviewer for a Center for Food Safety report on the dangers of neonics. The next year, he published a paper suggesting that a new genetic pest treatment, dubbed RNAi pesticides, required a new means of risk assessment. The publications drew media interest, and after an interview with an NPR affiliate, Lundgren was brought into a conference call with his supervisor, Sharon Papiernik, and an area director above her, Larry Chandler. “You shouldn’t talk to the press anymore without prior approval,” Lundgren says Chandler told him. “We’re trying to protect you.” As a regulatory scientist, Lundgren believed that discussing his research was part of his job. Neither Papiernik nor Chandler responded to requests for interviews. A USDA spokesman said the agency would handle all responses. The spokesman said that Chandler doesn’t remember the conversation and that ARS scientists often receive guidance or approvals from supervisors and can present peer-reviewed research results but cannot speculate on policies. A few months later, in 2014, Lundgren gave an interview to Boulder Weekly. Within two weeks, he was the subject of a misconduct investigation over his office behavior. He was suspended for three days. After contacting all 11 of Lundgren’s then-staff members, as identified by staff members themselves, a complicated picture emerges. Eight requested anonymity, one spoke on the record and two declined to be interviewed — one invoking a nondisclosure agreement many staffers claimed they were asked to sign; the other saying, “If other staff members are talking to you, you’ll find out what you need to know.” Collectively, Lundgren’s staff members described the work environment as loose, sometimes juvenile, but said the whole group participated. They even collaborated on a letter to management decrying the investigation.

#### Lundgren’s work revolved around the negative impacts of pesticides used in US agriculture. His findings showed that neonic pesticides result in not only bee death but also biodiversity loss, but the USDA refuses to reform and continues to shut down scientific research

**Volk**, Steve. (2018). *Washington Post*. Retrieved 19 September 2018, from https://www.washingtonpost.com/lifestyle/magazine/was-a-usda-scientist-muzzled-because-of-his-bee-research/2016/03/02/462720b6-c9fb-11e5-a7b2-5a2f824b02c9\_story.html?noredirect=on&utm\_term=.51abcb49ac47 KT

There are signs, however, that this could be changing. Data seems to be mounting suggesting that pesticides are a significant contributor to bee declines. A recent scientific literature review conducted by researchers in the United Kingdom, France, Japan and Italy determined that pesticide exposure renders bees more susceptible to disease and increases mortality rates. **Pesticides have also been li**nked to harming bees’ memory and navigational capabilities. “No one would describe them as the driver,” says Lundgren, “but they are significant, and the government doesn’t seem to want to do anything about them.” Most of the attention has focused on neonicotinoids. Entering broad use here in the late ’90s, neonics’ global share of the pesticide marketplace ballooned by 2008 to roughly 25 percent and $2.5 billion. Neonics can be implanted directly on the seed and are classified as a “systemic” insecticide because they are fully incorporated into the plant’s tissue, remaining present in pollen and nectar. Two key studies have found that feeding neonics to bees, even in amounts so low they couldn’t be detected afterward, render them more susceptible to infection. The co-author of one of those studies, Jeffrey Pettis, is joining Lundgren in speaking out. Pettis is a highly respected entomologist and led the USDA’s bee laboratory in Beltsville for nine years, through April 2014, when he testified before the House Agriculture Committee. Pettis had developed what he describes as a “significant” line of research showing that neonics compromise bee immunity. But in his opening remarks before Congress, he focused on the threat posed by the varroa mite, often put forward by chemical company representatives as the main culprit behind bee deaths. Only under questioning by subcommittee Chairman Austin Scott (R-Ga.) did Pettis shift. Even if varroa were eliminated tomorrow, he told Scott, “we’d still have a problem.” Neonics raise pesticide concerns for bees “to a new level,” he said. About two months later, Pettis was demoted, losing all management responsibilities for the Beltsville lab. Dave Hackenberg, a central Pennsylvania beekeeper and longtime friend of Pettis’s, says Pettis confided in him that the official reason given for his demotion — poor performance as an administrator — wasn’t the real one. The real reason was his congressional testimony. Pettis, 61, has never provided a full public account of his side of the story. But with Hackenberg talking he decided to respond. “Dave and I talk a lot,” he said, “and I cannot be sure what I might have said to him around the time of my demotion.” But, Pettis said, the USDA’s congressional liaison told him that the Agriculture Committee wanted him to restrict his testimony to the varroa mite. “In my naivete,” he said, “I thought there were going to be other people addressing different parts of the pie. I felt used by the whole process, used by Congress.” The hearing was “heavily weighted toward industry,” he said, “and they tried to use me as a scientist, as a way of saying, ‘See, it’s the varroa mite,’ when that’s not how I see it.” As for his demotion, Pettis called himself a “bad administrator.” But did he think the hearing played a role? Pettis delivers an elliptical answer. He said he walked up to Scott afterward, to make small talk, and the congressman “said something about how I hadn’t ‘followed the script.’ ” A spokeswoman for Scott said the congressman no longer chairs the same House agriculture subcommittee and referred questions to the committee’s professional staff. A spokesperson there declined to make anyone available for an interview. “In my gut,” said Pettis, “I feel I pissed someone off with my testimony. Beyond that I have not felt or seen the big hand of industry saying, ‘We’re going to make you pay for this.’ I have seen more direct evidence that Congress was influenced by industry than I ever felt with regard to the USDA.” A USDA spokesman said Pettis’s demotion was in no way linked to his research or testimony, and points to USDA studies on the varroa mite, sublethal pesticide effects and preserving genetic diversity as examples of “breakthrough studies” the agency has conducted. The dispute hit a new low for Lundgren in July, when he finished a draft of a new paper on RNAi pesticides. RNAi pesticides work by attaching a molecule to the target pest’s DNA, keeping specific, vital gene sequences from functioning. Lundgren and postdoc Chrissy Mogren used computer software to mimic the action of 21 such pesticides to determine if any threaten honeybees. What they discovered is that each pesticide might bind with some section of the honeybee’s DNA.Lundgren himself describes this result as not so dramatic as it sounds. The honeybee genome is vast, and any overlap between the pesticide and the bee’s genome might prove innocuous and unrelated to survival. Still,Lundgren thought of this research as a step to encourage further study. He also knew the data would likely spark more trouble with his bosses, so he sent the paper to seven colleagues for informal peer reviews. Five suggested relatively minor revisions, checking one of two boxes indicating the paper as “acceptable” for submission.Neil Hoffman and John Turner, both managers for the USDA’s Animal and Plant Health Inspection Service, referred to the paper as “trivial” and didn’t check a box. Hoffman and Turner said the paper offered no evidence of “meaningful” interactions between the pesticides and the honeybee genome. Lundgren’s supervisors made the same argument and refused him permission to submit the paper to an outside journal. **“**The whole process seemed tainted to me by then,” says Lundgren. “They were suppressing science. This was a ‘proof of concept’ paper” — a pointer to areas scientists might research further — “a standard part of science.” Greg Heck, Monsanto’s weed control platform lead, with an expertise in RNAi technologies, believes Lundgren is too alarmist about the new technology and says Monsanto is conducting tests to make sure the pesticides are harmless to bees. But, hearing what the paper contains, he said he believes submitting it for publication was appropriate. “I haven’t seen the study, but I am a firm believer in getting research out there,” he said, “because then we can discuss the results and say, ‘Hey, is any of this truly meaningful?’ ” At this point, Lundgren started planning a lab outside USDA, with some of the people he calls his “professional family,” including a pair who worked with him when he was suspended for unbecoming conduct. He accompanied me to the site, a half-hour jaunt from his ranch home across the flatlands and open highways of Brookings. The farm, Blue Dasher, is named after Lundgren’s favorite dragonfly species. Ecdysis is the process of molting, when an insect sheds its skin and transforms, a period of great promise and vulnerability. The symbolism is entirely conscious. “I don’t think science can be done, at least on this subject, in any of the conventional ways,” he says. “I think we need truly independent scientists — not funded by government or industry.” Bee declines, says Lundgren, are not difficult to understand. “Yes, the bees are in crisis, and we need to help them,” he says. “But what we have is not a bee problem. What we have is a biodiversity problem.” U.S. corporate agriculture tends toward monoculture farming — in the simplest terms, one giant farm specializing in one crop. The two key monoculture crops are corn and soybeans. Corn alone takes up 30 percent of the country’s crop space, an area almost the size of California. Soybean acreage is nearly as vast. The corn rootworm, the Colorado potato beetle and soybean aphids all thrive best on the crops that give them their names. And so monocultures have allowed, even caused, says Lundgren, pest populations to explode. “We’re using all of these pesticides because we’ve created a pest problem,” Lundgren says, “and bee health is a symptom of this underlying cause.” He says the solution is to diversify American farming. “Any other course is unsustainable,” he says. “Pesticides, herbicides, fungicides should be something we resort to, not a first option.” Lundgren says he will use Blue Dasher to prove farmers can produce high yields, big profits and enough food by rotating crops, which will suppress pest populations naturally. As he stands at the edge of what he hopes will be his new operations, the land spread out before him, he looks happy. “This,” he says, “is the future.” In November, when he accepted a civic courage award in Washington from the Shafeek Nader Trust for his stand against the USDA, he evoked the future as a talisman, a future in which bees and our food supply will no longer be under threat. This time, as if sensing skepticism, he goes on: “I really believe it,” he says. “We can do it through science.”

#### It really bee like that-Bee death leads to a laundry list of impacts, especially *environmental degregation*, *limited food supply*, and *biodiversity loss*

Rice 17 [Doyle Rice (Doyle Rice has covered weather and climate for USA TODAY since 2004. From blizzards and hurricanes to tornadoes and floods, the USA's wild weather keeps him busy) March 24th 2017, USA Today, “What if all bumblebees went extinct? We'd be in 'a world of trouble'” <https://www.usatoday.com/story/tech/sciencefair/2017/03/24/what-if-all-bumblebees-went-extinct-wed-world-trouble/99582888/> //BWSKR]

For the first time, a bumblebee has been placed on the endangered species list. But what if they went extinct? Well, if you like to eat, you should worry about bumblebees — they're the most important insect pollinators of a variety of crops like cranberries, blueberries and tomatoes, according to Clay Bolt of the World Wildlife Fund. In fact, one out of every three bites of food you eat has been helped along in some way by bees, said Rebecca Riley of the Natural Resources Defense Council. According to the UN’s Food and Agriculture Organization, 90% of the world’s food supply comes from about 100 crop species and 71 of those crops (especially fruits and vegetables) rely on bees for pollination. In the U.S., bee activities generate $15 billion a year, the World Wildlife Fund said. This includes "domesticated" bees such as honeybees. Bumblebees are considered "wild" bees. Bumblebees also pollinate a broad range of native plants that play a vital role in numerous ecosystems, Bolt said. He said that "if all bumblebees disappeared it is highly likely that we would feel the ripples of their loss, in terms of the foods we eat, the loss of economic benefits, and the general integrity of the natural world." "Everything in nature is connected as a result of millions of years of evolution," Bolt added. "Take away a bee and what happens to the flowers that depend on them, or the birds that eat the seeds from those flowers, the raptors that eat those seed-eating birds, and the fish that rely on stands of pollinated plants to filter ground water?" The U.S. Fish and Wildlife Service earlier this week placed the rusty patched bumblebee on the endangered species list because the population has declined by 90% in the past 20 years, Riley said. The main threats to the bee are habitat loss, pesticides and disease, she added. The bee "can't sustain the kind of losses we're seeing," she said. The rusty patched bumblebee is now the first bee of any type in the continental U.S. to receive the endangered species designation. In September, the Obama administration designated seven species of bees in Hawaii as endangered. Trump relents: Bumblebee to be listed as endangered species Unfortunately, the rusty-patched bumblebee's dramatic decline is only the tip of the iceberg for the loss of North American bumblebee species. One out of every four species of bumblebee on the continent is at risk of extinction, according to The Xerces Society for Invertebrate Conservation. Other bumblebees that are being evaluated for listing as an endangered species include the yellow banded bumblebee, the Western bumblebee and Franklin’s bumblebee, Riley of the NRDC said. What's good news, she said, is that the actions taken to protect the rusty patched bumblebee should also help protect other species. Butterflies and birds will also be helped. More 'What happens ...' What happens when you don't use a toilet seat cover? What would happen if you didn’t brush your teeth for a year? What would happen if you were hit by a penny falling from a skyscraper? What happens if you don't sleep for 24 hours? You're basically drunk So could all bees go extinct? It's unlikely, Bolt noted, as there are 4,000 known species of bees in North America alone and about 20,000 species worldwide. "But if all bees did disappear, we'd all be in a world of trouble," he said. "The variety of foods would be incredibly reduced and who could even predict how their loss would ripple throughout the world's many ecosystems." Facebook Twitter Google+ LinkedIn Bumblebees are on the endangered species list Fullscreen A male rusty-patched bumblebee (Bombus affinis) rests on a weed in Madison, Wis. Clay Bolt Nature Photography People can help boost the rusty patched bumblebee population by growing a garden or adding a native flowering tree or shrub to yards and minimizing pesticide use, the U.S. Fish and Wildlife Service said. Leaving some areas of the yard unmowed in summer and unraked in fall can also help since bumblebees need a safe place to build their nests and overwinter. Additionally, try leaving some standing plant stems in gardens and flower beds in winter, the agency suggested. The extinction of the rusty patched bumblebee "would mean the loss of an incredibly beautiful animal that shouldn't need justification for protection," Bolt said. "It has arrived at this point in the history of the world because it has survived the trials and tribulations of life's many challenges." "For that alone, it has earned the right to survive on its own merit," he said. "All leading evidence for the causes of the rusty patched bumblebee's decline points to the results of human activity. The least we can do is offer it a fighting chance for recovery."

## Plan

#### Thus, the plan text. Resolved: The United States federal government should implement a federal shield law that gives reporters the right to protect the identity of confidential whistleblower sources within the United States Department of Agriculture and the Environmental Protection Agency.

Devine 17 [Tom Devine (GAP Legal Director, and has worked at the organization since 1979), September 9th 2017, House Oversignt and Government reform Committee, SUBCOMMITTEE ON FEDERAL WORKFORCE, U.S. POSTAL SERVICE AND THE CENSUS on WHISTLEBLOWER PROTECTION SINCE PASSAGE OF THE WHISTLEBLOWER PROTECTION ENHANCEMENT ACT, <https://oversight.house.gov/hearing/five-years-later-review-whistleblower-protection-enhancement-act/> //BWSKR]

While the WPEA was landmark legislation, the above concerns demonstrate that we have a lot of work left to achieve its purposes. The recommendations below are a menu of unfinished ￼15 business that badly needs completion. Suggestions are organized to reflect issues remaining from the WPEA; structural reforms for emerging threats from new loopholes and tactics; and fine tuning of rights already established. Holdover issues \* Jury trials: This is the most significant, necessary reform, because currently there is no legitimate due process forum for whistleblowers to defend their rights. As seen above, credible due process has not been available at the MSPB. In the WPEA Congress postponed whether to provide jury trials for civil service whistleblowers until after a Government Accountability Office (GAO) study last fall. GAO did not find any disadvantages. Without further delay federal whistleblowers should have the right to seek justice from the citizens they risk their careers to defend. They are the only significant portion of the labor force without the option for jury trials. Since 2002 Congress has included it for corporate whistleblowers in 13 laws for nearly the entire private sector. Further, even if were functional, the MSPB lacks the expertise and independence from political pressure for politically-sensitive or high-stakes cases of national significance. But those cases are the most important reasons we need whistleblowers. Currently federal whistleblowers are the only major sector of the labor force without access to juries to enforce their rights. They are available for all state and local government employees, as well as nearly the entire private sector. This loophole must be closed. First class public service requires first class due process. \* MSPB Summary Judgment authority: Unfortunately, many unemployed whistleblowers cannot afford to seek justice in court. For them an MSPB administrative hearing is their only chance for due process. Agency desires to avoid public hearings also lead to a significant number of settlements. The Board previously sought authority to deny hearings16 though summary judgment authority, so Congress sought GAO review. The MSPB has stopped seeking summary judgment powers, and last fall’s GAO report did not recommend providing them. This proposal should be shelved. The right to some hearing is important for whistleblowers to achieve closure, and to obtain at least some relief. Most significant, summary judgment authority means denying a hearing on legal grounds. But Board AJ’s legal interpretations have butchered the law and forced lengthy Board remands. The Administrative Judge corps badly needs WPA training. It would be irresponsible to consider fiving them any power to further curtail whistleblower due process rights until training has been completed. \* All Circuits Review: This issue should be as noncontroversial as it is significant. In 2012 Congress experimented with giving whistleblowers normal access to appeals courts for challenges to MSPB decisions. If the experiment is not made permanent this year, the Federal Circuit Court of Appeals again will have a judicial monopoly on how the WPA is interpreted. There should not be any opposition to institutionalizing this right consistent with the Administrative Procedures Act. The Federal Circuit’s prior hostility is why Congress has had to reenact three times the rights it passed in 1978. The pilot solution of all circuits review has not had any adverse side effects; and has provided healthy competition that has improved the quality of Federal Circuit statutory interpretations, such as in MacLean v. DHS. While not a final decision, the court twice unanimously rejected an MSPB decision that would have permitted agency regulations to cancel the WPA. Unfortunately, based on its track record the Federal Circuit remains a forum that is hostile to the Act’s bottom line goal – canceling retaliation. The court’s record is 0-15 against whistleblower for final decisions on the merits. While its respect for the law has improved, the 17 court remains close minded to whistleblowers. At other circuits, the track record is 1-2. Digests are enclosed as Exhibits 3 and 4. Significantly, the favorable decision in Kerr v. Jewell not only supported the whistleblower but held that the pre-WPEA Federal Circuit loopholes were erroneous. If we had all circuits review previously, Congress may not have needed to spend 13 years enacting the WPEA. If we institutionalize it now, it may not be necessary for statutory whistleblower rights to be born again a fourth time. \* Ombudsmen: The WPEA also included an experiment for every Office of Inspector General (OIG) to have a Whistleblower Ombudsman. Again, it must be made permanent this year, or lapse. This resource should be made permanent. This experiment has been an unqualified success, with effective leadership government-wide by the Department of Justice OIG to help train and share lessons learned. Structural reforms to address newly emerging threats Four other issues must be addressed to counter emerging threats to whistleblower rights that may be more severe than conventional termination. \* Retaliatory criminal actions: Since the WPEA made it more difficult to fire whistleblowers, as discussed above agencies increasingly have shifted to harassment through criminal investigations and prosecution referrals. The bottom line is that whistleblowers are defenseless against criminal witch hunts. This loophole must be closed by giving them the right to challenge retaliatory investigations as soon as they are opened. Last year Congress outlawed retaliatory investigations at the Department of Veterans Affairs, and by Offices of Inspector General. Those sound precedents should be adopted generally in the WPA. \* Temporary relief: More than any other factor, temporary relief makes a difference to end unnecessary, prolonged conflict. When granted, agencies try to resolve retaliation disputes 18 quickly and constructively, because they are losing until the case is over. Without it, agencies drag out conflict as long as possible. Until the dispute is over, they are winning with maximum chilling effect, because the whistleblower has vanished from the workplace. This is fatal for the Act’s goals, since OSC and MSPB final decisions often take three to six years, or more. By that point, whistleblower victories may be too late. They could not survive for years without a salary, and already have gone bankrupt. That creates an inventive for agencies to stall, appeal indefinitely, or do whatever is necessary to starve out the whistleblower. Currently only the OSC has a realistic chance to obtain stays. The OSC and Offices of Inspector General should have the authority to grant stays automatically, without resorting to litigation. But those agencies only can act anecdotally and never will be reliable as a consisrtent source for temporary relief. As this Committee previously has approved in subcommittee markup, the legal standards should be changed to provide temporary relief whenever employees prove a prima facie case of illegal retaliation. \* Accountability through discipline: Currently there is no deterrent effect to prevent retaliation, because accountability only occurs on a token basis. Only the OSC can seek discipline under tougher legal standards than to prove retaliation, and formal disciplinary prosecutions almost never occur. To prevent harassment, accountability through discipline must become a credible threat for agencies to consider whistleblower retaliation. At GAP we are concerned about a schedule for automatic discipline based solely on OSC, OIG or board AJ rulings as passed last year for the DVA, because it bypasses due process. Agencies frequently use the Machiavellian tactic of accusing whistleblowers of whistleblower retaliation, and under the constitution no one should be deprived of a fair day in court. In our view, a better option is enfranchising employees to file19 disciplinary counterclaims when defending themselves. Judges could order discipline as part of relief. Most significant, there should be personal liability and punitive damages for retaliation. That would institutionalize both deterrence and make it easier for whistleblowers to find attorneys. \* Sensitive jobs: As discussed above, this national security loophole to the merit system can be imposed at will to cancel all civil service rights for any employee working in the federal government. Normal civil service appeal rights for a non-partisan, professional work force must be restored for any commitment to prevent government abuses of power. Last session’s Senate bill for OSC reauthorization wisely closed the due process loophole. We recommend enacting the Senate provision, and reinforcing it by making sensitive job designations a personnel action to lock in protection against merit system violations like whistleblower retaliation. Fine tuning Similar to hostile specific pre-WPEA precedents, the post-WPEA requires clarification to make boundaries more precise. OSC amicus briefs have effectively isolated the most significant new loopholes. We recommend WPA clarifying amendments for the following issues. \* OSC access to information: Another reason for delays and low corrective action rates is that agencies do not cooperate with, or even obstruct OSC investigations. Passive resistance through long delays or refusal to provide relevant documents frustrate the WPEA’s goals. The OSC should have the same subpoena authority to enforce the law as Offices of Inspector General. Further, the WPA should specify that if agencies do not provide relevant documents or answer relevant inquires, the OSC can presume the silence is a legal admission. GAP applauds prior Committee and House action on this issue.20 \* Scope of job duties exception: In terms of public policy, it does not make any difference whether a federal whistleblower discloses fraud, waste and abuse as part of a job duty or as personal compliance with the Government Employee Code of Ethics. The heightened requirement for retaliation only was added to the WPEA to prevent another Senate hold. It should be interpreted narrowly only to cover specific assignments that are part of an employee’s primary responsibility, such as the contents of audits, inspections, reports of investigation or professional research publications. It would rewrite the WPA if the heightened job duties were applied whenever a disclosure is related to a job duty. \* Burden of proof for job duties exception: If the category applies, the statute should specify that retaliation can be established through circumstantial evidence, consistent with the standards for all other prohibited personnel practices. Circumstantial evidence of retaliation includes factors such as threats, inconsistent treatment, motive, hostile reactions or personal attacks, failure to take corrective action, and failure to follow agency procedures. Those standards have been consistent for a quarter century since the Board’s precedent in Valerino v. Department of Health and Human Services, and have served the merit system well. \* Pre-employment disclosures: Under current case law, disclosures covered by the WPA may not be protected if made before an application for federal employment. There is no basis for this temporal loophole, either in law or public policy. Congress repeatedly has specified that the WPA protects “any” disclosure. The point of the merit system is to protect the entry of qualified public servants, not just to prevent their removal. \* Blacklisting: The law also is unclear about protection for ongoing retaliation after a whistleblower leaves federal service. For many agencies termination in not enough. In order to make an example that scare others into silence, they use negative references or even pressure21 tactics with contractors and private employers to blacklist the whistleblower from the profession or any employment, not just the civil service. The National Defense Authorization Act holds federal contractors liable for whistleblower retaliation even when directed by a federal agency to retaliate. The WPA should balance accountability for the civil service by making clear that the same rights and responsibilities apply. Recommendations or other actions to support or oppose employment should be institutionalized as a personnel action. \* Right to refuse illegal rules and regulations. Since 1989 it has been equally illegal to act against an employee for refusing to violate the law, the same as for blowing the whistle. In the Rainey decision, however, the Board and Federal Circuit ruled that protection does not extend to those who refuse to violate illegal regulations. This is essential a sophist loophole, since statutes are the authority for rules and regulations. Even if there were a valid distinction, as a matter of public policy the loophole is invalid. Whistleblowers are protected for disclosing any illegality, not just statutory violations. The same shield should protect them for walking the talk. Last Congress the House passed the Follow the Rules Act to close this loophole, but the Senate failed to act. WPEA revisions should include this well-taken reform.

#### Environmental whistleblowers save lives and catalyze legislative change – journalistic protections are crucial to this process.

**GAP 17**. [(Government Accountability Project) “Working with Whistleblowers: A Guide for Journalists” Governmental Accountability Project, whistleblower.org, 2017]. MCM

**Information shared by whistleblowers**—employees who discover and disclose evidence of serious abuses of public trust—**can** take down a corrupt CEO or corporation, **drive significant legislative and agency reforms, save lives from contaminated food**, prevent nuclear accidents, and prompt the impeachment of a President. **As concerns about corruption, wrongdoing and serious threats to public health, safety and the environment increase, so does our dependence on whistleblowers’ willingness to speak up as a mechanism to promote accountability. The power of whistleblowers to hold institutions and leaders accountable** very often **depends on the critical work of journalists, who verify whistleblowers’ disclosures and then bring them to the public. The partnership between whistleblowers and journalists is essential to a functioning democracy**. **Journalists and legitimate media outlets are under unprecedented attack even as their role as watchdogs empowering the public with information is more important than ever.** Similarly, whistleblowers who reveal serious wrongdoing committed by their employers have always faced the risk of professional and personal reprisal, but never more so than in today’s political environment. The need for both whistleblowers and journalists has escalated, but so has their vulnerability. Whistleblowers who may reach out to journalists with information generally aren’t activists. Rather, they are typically employees who have tried to raise concerns with their management and were frustrated by the response and/or harassed.

## Framing

#### The standard is consistency with deep ecology- an understanding that we are all in this together. We are the dirt road as much as we are those who step upon it.

Roger S. Gottlieb, professor of humanities at Worcester Polytechnic Institute, 1994, “ETHICS AND TRAUMA: LEVINAS, FEMINISM, AND DEEP ECOLOGY”, http://www.crosscurrents.org/feministecology.htm

What moral stance will be shaped by our personal sense that we are poisoning ourselves, our environment, and so many kindred spirits of the air, water, and forests? To begin, we may see this tragic situation as setting the limits to Levinas's perspective. The other which is nonhuman nature is not simply known by a "trace," nor is it something of which all knowledge is necessarily instrumental. This other is inside us as well as outside us. We prove it with every breath we take, every bit of food we eat, every glass of water we drink. We do not have to find shadowy traces on or in the faces of trees or lakes, topsoil or air: we are made from them. Levinas denies this sense of connection with nature. Our "natural" side represents for him a threat of simple consumption or use of the other, a spontaneous response which must be obliterated by the power of ethics in general (and, for him in particular, Jewish religious law[(23)](http://www.crosscurrents.org/feministecology.htm%22%20%5Cl%20%22FN23) ). A "natural" response lacks discipline; without the capacity to heed the call of the other, unable to sublate the self's egoism. Worship of nature would ultimately result in an "everything-is-permitted" mentality, a close relative of Nazism itself. For Levinas, to think of people as "natural" beings is to assimilate them to a totality, a category or species which makes no room for the kind of individuality required by ethics.[(24)](http://www.crosscurrents.org/feministecology.htm%22%20%5Cl%20%22FN24) He refers to the "elemental" or the "there is" as unmanaged, unaltered, "natural" conditions or forces that are essentially alien to the categories and conditions of moral life.[(25)](http://www.crosscurrents.org/feministecology.htm%22%20%5Cl%20%22FN25) One can only lament that Levinas has read nature -- as to some extent (despite his intentions) he has read selfhood -- through the lens of masculine culture. It is precisely our sense of belonging to nature as system, as interaction, as interdependence, which can provide the basis for an ethics appropriate to the trauma of ecocide. As cultural feminism sought to expand our sense of personal identity to a sense of inter-identification with the human other, so this ecological ethics would expand our personal and species sense of identity into an inter-identification with the natural world. Such a realization can lead us to an ethics appropriate to our time, a dimension of which has come to be known as "deep ecology."[(26)](http://www.crosscurrents.org/feministecology.htm%22%20%5Cl%20%22FN26) For this ethics, we do not begin from the uniqueness of our human selfhood, existing against a taken-for-granted background of earth and sky. Nor is our body somehow irrelevant to ethical relations, with knowledge of it reduced always to tactics of domination. Our knowledge does not assimilate the other to the same, but reveals and furthers the continuing dance of interdependence. And our ethical motivation is neither rationalist system nor individualistic self-interest, but a sense of connection to all of life. The deep ecology sense of self-realization goes beyond the modern Western sense of "self" as an isolated ego striving for hedonistic gratification. . . . . Self, in this sense, is experienced as integrated with the whole of nature.[(27)](http://www.crosscurrents.org/feministecology.htm%22%20%5Cl%20%22FN27) Having gained distance and sophistication of perception [from the development of science and political freedoms] we can turn and recognize who we have been all along. . . . we are our world knowing itself. We can relinquish our separateness. We can come home again -- and participate in our world in a richer, more responsible and poignantly beautiful way.[(28)](http://www.crosscurrents.org/feministecology.htm%22%20%5Cl%20%22FN28) Ecological ways of knowing nature are necessarily participatory. [This] knowledge is ecological and plural, reflecting both the diversity of natural ecosystems and the diversity in cultures that nature-based living gives rise to. The recovery of the feminine principle is based on inclusiveness. It is a recovery in nature, woman and man of creative forms of being and perceiving. In nature it implies seeing nature as a live organism. In woman it implies seeing women as productive and active. Finally, in men the recovery of the feminine principle implies a relocation of action and activity to create life-enhancing, not life-reducing and life-threatening societies.[(29)](http://www.crosscurrents.org/feministecology.htm%22%20%5Cl%20%22FN29) In this context, the knowing ego is not set against a world it seeks to control, but one of which it is a part. To continue the feminist perspective, the mother knows or seeks to know the child's needs. Does it make sense to think of her answering the call of the child in abstraction from such knowledge? Is such knowledge necessarily domination? Or is it essential to a project of care, respect and love, precisely because the knower has an intimate, emotional connection with the known?[(30)](http://www.crosscurrents.org/feministecology.htm%22%20%5Cl%20%22FN30) Our ecological vision locates us in such close relation with our natural home that knowledge of it is knowledge of ourselves. And this is not, contrary to Levinas's fear, reducing the other to the same, but a celebration of a larger, more inclusive, and still complex and articulated self.[(31)](http://www.crosscurrents.org/feministecology.htm%22%20%5Cl%20%22FN31) The noble and terrible burden of Levinas's individuated responsibility for sheer existence gives way to a different dream, a different prayer: Being rock, being gas, being mist, being Mind, Being the mesons traveling among the galaxies with the speed of light, You have come here, my beloved one. . . . You have manifested yourself as trees, as grass, as butterflies, as single-celled beings, and as chrysanthemums; but the eyes with which you looked at me this morning tell me you have never died.[(32)](http://www.crosscurrents.org/feministecology.htm%22%20%5Cl%20%22FN32) In this prayer, we are, quite simply, all in it together. And, although this new ecological Holocaust -- this creation of planet Auschwitz -- is under way, it is not yet final. We have time to step back from the brink, to repair our world. But only if we see that world not as an other across an irreducible gap of loneliness and unchosen obligation, but as a part of ourselves as we are part of it, to be redeemed not out of duty, but out of love; neither for our selves nor for the other, but for us all.

#### Prefer ecological ethics and impacts. We can negotiate with other countries, we can negotiate with Trump, but we can NEVER negotiate with the environment.

Wesley Shumar, ’99 (Review of: Beyond Anthropocentrism in Ethics, BEING AND WORTH, by Andrew Collier. Routledge, Critical Realism Intervention Series, 1999. ix

Being and Worth is a small book with a big argument, and in it Andrew Collier has made a significant contribution to contemporary thinking on ethics. Western philosophical tradition tends to concentrate on the subtleties of epistemology and ontology, considering ethics to be on different, less rigorous ground – when not ignoring it entirely. This separation of head from heart is common to classical, mod- ern and postmodern thought, and it is what tribal elders in many different cultures mean when they say Westerners are people who miss the forest for the trees; that is, miss the very important things in life while amassing techno- logical and scientific know-how. Collier’s thesis is that there is an equivalence between being and goodness. The good is not something subjective and completely relative to cultural ideas and personal valu- ing but is in fact an objective part of the world. This is because there is a correct relationship between the objects of the world, natural and human, and ourselves. Culture will, of course, affect how we articulate and understand objects and our relationship to them, but this doesn’t pre- clude the objective underlying structure. On the face of it, one wants to reject this thesis, so at odds with the relativism that dominates contemporary thinking. However, when one considers the examples of nature and environmental issues, as Collier does, it’s clear he has a point. We in the West have been slow to see that there is indeed a correct relationship to objects in nature and that if we don’t learn about this relationship, both we and the nat- ural environment suffer. The undeniable global implica- tions of deforestation, ozone and greenhouse gas emissions, pollution, and so forth, are not relative to cultural assump- tions but have an objectivity that transcends culture.

## 1AR Overview

Right now, there is no federal regulation requiring that federal whistleblowers receive the rights to confidentiality and due process – that’s the second Devine card. The first Devine card tells you that retaliation is rampant in whistleblowing cases and both Volk cards tells you specifically that in the USDA bee death research is covered up for the sake of corporations – we give you two examples, first that Lundgren’s research was covered up with frivolous complaints by the USDA having NOTHING to do with his research, just to silence him. The second is the Pettis example, where Pettis was told to say that varroa mite is the leading cause of bee death in front of congress due to departmental pressure, saying that he felt “used” by the system. this means that right now there is not any accurate research on bee death happening because it is always circumvented for corporate interests. Rice tells you that the bumblebee is already on the endangered species list and Volk 2 tells you that the current use of pesticides amps up the threat of bee death to a whole new level and GAP tells you that the aff is uniquely key to accountability and scientific integrity and that means that the aff is try or die right now. That means if there is any chance that you buy that current protections for whistleblowers in the USDA are not sufficient, you affirm on the risk that we effectively save the bees (and that’s what all the buzz is about.)

# Underview

#### 1. Debating the merits of policies is key to activism and challenging power structures Coverstone 5

 [Alan, assistant professor of education at Belmont University, “Activism”, [http://home.montgomerybell.edu/~coversa/Acting%20on%20Activism%20(Nov%2017-2005).doc)%5D](http://home.montgomerybell.edu/~coversa/Acting%20on%20Activism%20%28Nov%2017-2005%29.doc%29%5D), 2005 // ABML]
An important concern emerges when Mitchell describes reflexive fiat as a contest strategy capable of eschewing the power to directly control external actors (1998b, p. 20). Describing debates about what our government should do as attempts to control outside actors is debilitating and disempowering. Control of the US government is exactly what an active, participatory citizenry is supposed to be all about. After all, if democracy means anything, it means that citizens not only have the right, they also bear the obligation to discuss and debate what the government should be doing. Absent that discussion and debate, much of the motivation for personal political activism is also lost. Those who have co-opted Mitchell’s argument for individual advocacy often quickly respond that nothing we do in a debate round can actually change government policy, and unfortunately, an entire generation of debaters has now swallowed this assertion as an article of faith. The best most will muster is, Of course not, but you don’t either! The assertion that nothing we do in debate has any impact on government policy is one that carries the potential to undermine Mitchell’s entire project. If there is nothing we can do in a debate round to change government policy, then we are left with precious little in the way of pro-social options for addressing problems we face. At best, we can pursue some Pilot-like hand washing that can purify us as individuals through quixotic activism but offer little to society as a whole. It is very important to note that Mitchell (1998b) tries carefully to limit and bound his notion of reflexive fiat by maintaining that because it views fiat as a concrete course of action, it is bounded by the limits of pragmatism (p. 20). Pursued properly, the debates that Mitchell would like to see are those in which the relative efficacy of concrete political strategies for pro-social change is debated. In a few noteworthy examples, this approach has been employed successfully, and I must say that I have thoroughly enjoyed judging and coaching those debates. The students in my program have learned to stretch their understanding of their role in the political process because of the experience. Therefore, those who say I am opposed to Mitchell’s goals here should take care at such a blanket assertion. However, contest debate teaches students to combine personal experience with the language of political power. Powerful personal narratives unconnected to political power are regularly co-opted by those who do learn the language of power. One need look no further than the annual state of the Union Address where personal story after personal story is used to support the political agenda of those in power. The so-called role-playing that public policy contest debates encourage promotes active learning of the vocabulary and levers of power in America. Imagining the ability to use our own arguments to influence government action is one of the great virtues of academic debate. Gerald Graff (2003) analyzed the decline of argumentation in academic discourse and found a source of student antipathy to public argument in an interesting place. m up against their aversion to the role of public spokesperson that formal writing presupposes. It’s as if such students can’t imagine any rewards for being a public actor or even imagining themselves in such a role. This lack of interest in the public sphere may in turn reflect a loss of confidence in the possibility that the arguments we make in public will have an effect on the world. Today’s students’ lack of faith in the power of persuasion reflects the waning of the ideal of civic participation that led educators for centuries to place rhetorical and argumentative training at the center of the school and college curriculum. (Graff, 2003, p. 57) The power to imagine public advocacy that actually makes a difference is one of the great virtues of the traditional notion of fiat that critics deride as mere simulation. Simulation of success in the public realm is far more empowering to students than completely abandoning all notions of personal power in the face of governmental hegemony by teaching students that nothing they can do in a contest debate can ever make any difference in public policy. Contest debating is well suited to rewarding public activism if it stops accepting as an article of faith that personal agency is somehow undermined by the so-called role playing in debate. Debate is role-playing whether we imagine government action or imagine individual action. Imagining myself starting a socialist revolution in America is no less of a fantasy than imagining myself making a difference on Capitol Hill. Furthermore, both fantasies influenced my personal and political development virtually ensuring a life of active, pro-social, political participation. Neither fantasy reduced the likelihood that I would spend my life trying to make the difference I imagined. One fantasy actually does make a greater difference: the one that speaks the language of political power. The other fantasy disables action by making one a laughingstock to those who wield the language of power. Fantasy motivates and role-playing trains through visualization. Until we can imagine it, we cannot really do it. Role-playing without question teaches students to be comfortable with the language of power, and that language paves the way for genuine and effective political activism. Debates over the relative efficacy of political strategies for pro-social change must confront governmental power at some point. There is a fallacy in arguing that movements represent a better political strategy than voting and person-to-person advocacy. Sure, a full-scale movement would be better than the limited voice I have as a participating citizen going from door to door in a campaign, but so would full-scale government action. Unfortunately, the gap between my individual decision to pursue movement politics and the emergence of a full-scale movement is at least as great as the gap between my vote and democratic change. They both represent utopian fiat. Invocation of Mitchell to support utopian movement fiat is simply not supported by his work, and too often, such invocation discourages the concrete actions he argues for in favor of the personal rejectionism that under girds the political cynicism that is a fundamental cause of voter and participatory abstention in America today.

#### 2. Whole res debate is stale

1. They get access to a TON more ground than us while we’re pigeonholed to the one aff they can easily predict
2. Hurts education if you’re having the same debate every round
3. Spec is critical to the topic lit

Jones 13 -- Associate Professor of Law, J. Reuben Clark Law School, Brigham Young University [Ronnell Andersen Jones, “RETHINKING REPORTER'S PRIVILEGE,” Michigan Law Review, Vol. 111, No. 7 (May 2013), pp. 1221-1282, <https://www.jstor.org/stable/23812857>] \*brackets in original

By its very designation, a constitutional reporter's privilege applies only to a "reporter," and thus mandates a threshold showing that the party seeking the constitutional protection qualifies occupationally for the privilege. Even assuming that this determination was one that could have fairly been made four decades ago—an assumption the Branzburg majority flatly reject ed111—it is a task that has now become complicated to a degree of near impossibility,112 especially as technological changes have altered the primary mechanisms for gathering and disseminating news.113 Because "[preferential treatment of the press requires some definition of the intended beneficiaries," it seems clear that "[i]n a world in which many, if not most, business entities are information providers, it [will not be] easy to determine which of them are press."114 As "[established news media are disappearing or morphing into forms indistinguishable from new media that are anything but established,"115 the Branzburg focus on the journalist has "led to a kind of definitional football over whether ... it is possible to define the press with sufficient specificity and whether it is prudent for one class of speaker to be preferred over another."116 These concerns of prudence and specificity resonate throughout the case law and scholarship on this topic. On the question of prudence, our most basic constitutional principles seem to dictate that we avoid differentiating between categories of similarly situated speakers, particularly on less than clear bases.117 Even assuming that factors such as the social or democracy-enhancing value of the disseminated information could be used to limit the privilege,118 these content-based determinations run the real risk of themselves violating the First Amendment.119 More to the point, a Court-declared delineation of this sort "as a matter of First Amendment interpretation would fly in the face of more than two hundred years of constitutional wisdom," because "[t]he idea of defining or 'licensing' the press in this manner is anathema to our constitutional traditions."120 Thus, while perhaps expected and even appropriate when de signing the contours of a reporter's privilege as a statutory matter,121 this definitional line drawing is at best knotty as a basis for a constitutional doctrine. On the question of specificity, judges faced with applications of the reporter's privilege have repeatedly bemoaned the "vexing nature of [the] question" of who would be entitled to a reporter's privilege.122 Judges have noted, in particular, that "[t]he proliferation of communications media in the modern world makes it impossible to construct a reasonable or useful definition of' a reporter.123 Judge Sentelle of the D.C. Circuit outlined the conundrum: Are we then to create a privilege that protects only those reporters employed by Time Magazine, the New York Times, and other media giants, or do we extend that protection as well to the owner of a desktop printer producing a weekly newsletter to inform his neighbors, lodge brothers, co-religionists, or co-conspirators? Perhaps more to the point today, does the privilege also protect the proprietor of a web log: the stereotypical "blogger" sitting in his pajamas at his personal computer posting on the World Wide Web his best product to inform whoever happens to browse his way? If not, why not?124 Faced with this technological moving target, scholars and jurists have spilt gallons of ink setting forth proposed definitional approaches, ranging from exceptionally narrow classifications that would essentially include only professional journalists at established traditional media outlets,125 to very broad ones that would extend the privilege to any person performing the basic functions of a reporter.126 Some courts addressing the definitional issue in "cases involving traditional media entities have been so worried about the expansive scope of the privilege that they have been throwing the baby out with the bathwater and refusing to recognize the privilege at all."127 It is no exaggeration to say that the "futility of trying to decide as a matter of constitutional law who should have the right to protect confidential sources" is "[t]he most compelling objection to" a constitutional reporter's privilege with a Branzburg journalist focus.128 All told if the only constitutional framework available for assessing the flow of confidential information to the public is one that focuses on the reporter, the doctrine is destined to be mired in definitional difficulties in at least some cases, and likely in a growing number of them.

#### **3. Grant aff reasonability on T with a brightline of having turn ground, having a solvency advocate and being disclosed.**

1. The aff’s in the topic lit and is turnable – you get access to arguments like privilege causes environmental degregation or so many impact turns – that proves you can engage.
2. Solvency advocate and disclosure prove that you could have prepped this aff out beforehand. Prefer this you shouldn’t vote on marginal abuse since it doesn’t prove substance is irreversibly skewed which means you can still evaluate it
3. Time skew makes the 1AR an extremely hard speech and competing interps makes it so that I have to win defense on every piece of offense on the theory debate which means they can just outspread me since I have to cover everything

# Frontlines

## Ev ethics shell- inherency card

This is legit just not?? The ev?? Its from epa.gov . why do you think that matthew paul didn’t win the inherency claims> if anything this gives us inherency. LOOK AT THEIR SOURCE

Evidence ethics

**A. Interpretation:** Debaters may not read cards from EPA.gov and say that they are

**B. Violation:**

**C. Standards:**

*1. Debate’s Reputation:* If nobody bothers to check the sources of what is cut, it’s easy for us to misrepresent authors. This tarnishes debate’s reputation as an activity, since schools will think twice about funding an activity that allows kids to recycle evidence and look bad in philosophy class. Debate’s reputation is key to education since it’s a prerequisite to any education out of the activity, and an independent voter since we can’t debate if it’s not funded.

*2. Out of Round Education:* Dropping them ensures a check on debaters that don’t do their own work. Other responses kill ALL out of round education—it’s clear they didn’t cut the card because the context isn’t something you miss. Letting them run the card is an endorsement of debaters recycling evidence instead of cutting it and actually reading philosophy and topic lit. Out of round education is key since it provides the basis for all in-round discussion and has an expansive timeframe.

*3) Intellectual integrity* – Evidence distortion violates intellectual integrity.Torson[[1]](#footnote-1)

Too often in debate, strategy devolves into sophistry. **Debaters utilize** a series of **tactics** designed only to muddy the water, **to obscure a fair evaluation of** the merits of their arguments by either judges or opponents. **This includes** the **distortion of evidenc**e, e.g. by reading cards out of context so as to make it seem that authors using terms differently actually intend the same meaning. It includes evasive or overly ambiguous explanations of arguments, designed to allow debaters to shift their positions in the rebuttals. It includes impossibly dense and blippy analytical frameworks with contingent standards, layers of unreasonable spikes, theory bait, and other tricks hidden throughout. **These tactics are inconsistent with** an ethic of **intellectual integrity.** The rules that we set up to make the debate game intellectually rigorous are exploited to separate us altogether from a meaningful contest of ideas; the tail wags the dog. A student deploying these tactics hopes to win not because he marshals the most compelling argument, but because his opponent makes a superficial error or his judge is too embarrassed to admit that he didn’t properly follow the argument. We hope that the practice of dialectic contestation will help us to challenge or confirm our beliefs on important personal and political questions. **Strategies of** purposeful **obfuscation**, on the other hand, **turn arguments into mere instruments of power** - ways of manipulating the circumstances to contrive a favorable outcome. These strategies **are disingenuous approaches to** thinking through **the topic because they are** fundamentally **unrelated to the** residual **quality of the arguments.** That bad arguments could reliably beat good ones should strike us as a very strange outcome in any debate event worthy of the name.

Intellectual integrity is an independent voter. Torson 2[[2]](#footnote-2)

**Practiced with intellectual integrity, debate** can be a powerful vehicle for personal growth. It **encourages** the **self-reflection** that helps students **to cultivate a mature inner-life**. Conscience is little more than an honest internal dialogue – the ability to critically reflect on one’s own thoughts and actions. **Openness to opposing beliefs** requires appreciating what the world looks like from someone else’s point of view, which in turn **fosters** humility, perspective, and **tolerance.** I think that **many of us credit debate as a formative experience** precisely **because it taught** us the virtue of **intellectual integrity.** Intellectual integrity [It] is also **indispensable in** cultivating a sense of **civic virtue. Our public life is plagued by sophistry and** mindless **line-toeing.** Politics is treated like a spectator sport, and we engage only if we are enthralled by the spectacle. Intellectual integrity is a bulwark against citizenship devolving in this way. One with intellectual integrity is willing to be persuaded by reasoned argument rather than held hostage by ideology or tribalism. It requires suspicion of convention and to be more than a mere political dilettante or pseudo-intellectual. **Above all, intellectual integrity bars** credulous **acquiescence to demagogues** and mediocre apologists. By careful examination of the challenges we must face together, debate can foster a mature sense of connection to our many communities. We must recognize the burden of stewardship that comes with the opportunity to work with gifted young people. If what I’ve said rings true, then the **debate** community **is obliged to embrace intellectual integrity as one of its core values.** We aspire to be a community of thinkers and learners, and **this goal is conveyed** not simply by what we teach in the classroom but **by the practices we deploy.** I encourage the examination of those practices through the lens of intellectual integrity.

**D. Voter:** Education is a voter and a reason to drop the debater since

1) it’s the reason schools fund debate

2) absent the threat of losing, debaters will run educationally bankrupt arguments, creating the race to the bottom and impeding debate’s purpose and

3) in this case, dropping the debater is key—you’d get kicked out of a class or get a zero on an essay for misrepresenting an author, so you definitely deserve to get kicked out of a debate round for doing so.

Evaluate theory as a matter of competing interps since reasonability is based on judge preference and requires judge intervention.

And no RVI’s cross apply from the underview that:

1. RVI’s prevent theory from checking actual abuse and
2. They are logically incoherent by turning defensive arguments into offensive - debaters don’t just win for not misscutting cards!!

#  I don’t think we need

#### **USDA investigations of allegations are severely flawed – retaliation against whistleblowers makes coming forward unlikely.**

Boudreau, Catherine. (12/02/2016). Whistleblowers describe culture of sexual harassment, reprisals at USDA. Politico. Retrieved 19 September 2018, from https://www.politico.com/story/2016/12/usda-whistleblowers-232145 KT

“Before any cultural change can occur, the agency must acknowledge the scope of the problem and be willing to make a good-faith effort to address it,” Lesa Donnelly, vice president of the advocacy group USDA Coalition of Minority Employees, [told](https://www.politicopro.com/f/?id=00000158-b7af-d803-abdc-f7af346a0000) a House oversight panel Thursday. She alleged the department has been unwilling to rectify the problem despite a mountain of evidence. Donnelly, a former Forest Service administrator, filed a class-action lawsuit against the agency alleging a pattern of sexual harassment, hostile work environment and reprisals back in 1995. She joined another whistleblower, Denice Rice, in testifying about their experiences at the department. The women and other current USDA employees say the department’s investigations into misconduct are often delayed, mishandled, rarely result in the accused being held accountable and often lead to retaliation — a situation that deters formal complaints. And, by federal law, those who are singled out for removal can resign or retire without a stain on their record and with full benefits. The House Oversight and Government Reform Committee hearing on Thursday was the panel's latest to examine misconduct by federal employees and senior management officials amid internal investigations and media reports on the incidents, which have occurred at the USDA, [EPA](http://www.motherjones.com/environment/2016/08/epa-sexual-harassment) and Interior Department's [National Parks Service](http://highline.huffingtonpost.com/articles/en/park-rangers/). The USDA, in particular, has a long, troubled history of gender and racial discrimination, prompting some critics to deride it as “[the last plantation](http://www.theroot.com/articles/politics/2009/11/usda_attempts_to_resolve_civil_rights_complaints_of_black_farmers/)." When Vilsack took over the department, more than 20,000 discrimination claims were tied up in decades-old class-action lawsuits, which have since been resolved. In 2010, the USDA reached a $1.2 billion settlement with black farmers and another worth $760 million with Native American farmers over claims that the groups didn’t have equal access to loan programs.

#### The Trump administration has taken steps to silence various Interior Department agencies specifically on issues pertaining to the environment.

Marsh and Merica 17 [Rene Marsh and Dan Merica (Government regulation and transportation correspondent, Dan Merica is a CNN Political Reporter based in Washington, D.C., covering the 2018 midterm elections and the Trump administration), January 26, 2017, CNN Politics, “Trump administration reviewing EPA website, curbs agency communication,” <https://www.cnn.com/2017/01/25/politics/trump-epa-lockdowns/index.html> //BWSKR]

Washington (CNN) The Trump administration is examining the website of the Environmental Protection Agency to determine which information will remain, underscoring concerns that climate change and other scientific data might be removed. EPA employees have also been instructed not to release press releases, publish blog posts or post anything on social media. It's part of a crackdown by the new administration that seems to be especially felt at the EPA and the Interior Department, leaving some employees "terrified." EPA spokesperson Doug Erickson said the objective of the website review is to have an agency page that reflects the new administration's policies. Ex-EPA chief: We must keep protecting environment Ex-EPA chief: We must keep protecting environment 09:59 "We are not passing judgment on science," he said. Asked if climate change data on the EPA site would be removed because it doesn't reflect the ideas of the new administration, Erickson responded, "you can speculate that if you want but I didn't say that. I am only saying we are reviewing the website to make sure material on it reflects the new administration." Trump was outspoken during the campaign about wanting to curb environmental regulations that he said were hurting businesses. The President has also been a known climate change denier, tweeting in 2012 that "the concept of global warming was created by and for the Chinese in order to make US manufacturing non-competitive." White House press secretary Sean Spicer said there has been no specific directive to agencies. "There's nothing that comes from the White House," he said Wednesday. But the first week of the Trump administration has seen various efforts that could stifle communication with the public. The Interior Department's digital team was told to temporarily stop using Twitter after the National Park Service retweeted messages Friday that negatively compared the crowd sizes at Barack Obama's 2009 inauguration to Trump's inauguration. Christine Todd Whitman, EPA administrator under President George W. Bush, said the moves are heavy-handed. "I would say its extreme. Its an administration trying to put a strong marker down," Whitman said. "The reason for what they are doing is reasonable," she added. Yet "when you put in context how they feel about the press, he doesn't trust the press, it makes Trump administration approach look extreme." The lockdowns have led to widespread discontent inside government agencies that deal with climate change and environmental protections. Career staffers at the Interior Department, which includes the Park Service, are "terrified" that their day-to-day operations could run afoul of the Trump administration's desires, a source with knowledge of the situation inside the government agency tells CNN. Tensions are even higher after Friday's tweets, the source says, leaving many at the department feeling like they have to be extra careful as they go about their daily routines because it is unclear what could set off the White House or Trump's political appointees. House Minority Leader Nancy Pelosi said reports of gag orders to the EPA are "just appalling" and that the Trump administration seems "to be happy to be in a fact-free zone." Speaking to reporters in the Capitol Wednesday, **Pelosi also addressed reports of efforts to take down climate change material on the EPA website, calling such activity a "deterioration of intellectual sources to prevent information to flow."** Jeremy Symons, a former career employee at the EPA who worked through the transition between President Bill Clinton and George W. Bush, said this sort of information lock down is "unprecedented." "It didn't happen," Symons, who now works at the Environmental Defense Fund, said when asked whether anything like this happened during the Clinton-Bush transition. "This administration is walking into this transition... as though the impartial experts that keep the government running are political enemies and that is a mistake at EPA or any agency." He added, "It bodes badly for what we should expect moving forward from here." Trump agency websites are being closely watched both from both inside and outside the government. Badlands National Park's official Twitter account tweeted statistics about climate change on Tuesday, drawing attention from Democrats and others opposed to Trump administration policies. The tweets were up for mere hours before they were deleted. Badlands National Park deletes tweets on climate change Badlands National Park deletes tweets on climate change In a statement, the Park Service blamed "a former employee who was not currently authorized to use the park's account" for the tweets. The change in social media since the last major presidential transition complicates things, said Joe Valenzano, associate professor and chairman of the Department of Communications at the University of Dayton. "Because social media is relatively new, and the use of blogs to promote policy is relatively new there's no real precedent to say whether freezing communications in the way Trump administration has is a common practice or not," he said. But "in the larger context of Trumps war on the media you see tapestry that makes it look somewhat strange."

1. Adam Torson (Adam Torson has earned a Political Science B.A. with minors in History and Philosophy from the University of Minnesota, and a J.D. from the Hamline University School of Law. After a successful High School debate career, he was the Director of Debate at Hopkins High School (MN) for six years, and has been an Assistant Debate Coach at the Harvard-Westlake Upper School (CA) for two years. He was a Director of Student Life at the Victory Briefs Institute for three years and has been a Curriculum Director for three years. He is also the Managing Editor for Victory Briefs' Topic Analysis Books). “Debate and the Virtue of Intellectual Integrity by Adam Torson.” 24 March 2013. Victory Briefs. <http://victorybriefs.com/news/2013/3/debate-and-the-virtue-of-intellectual-integrity-by-adam-torson> [↑](#footnote-ref-1)
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