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Clery Act Needs Whistleblower Protection



BY PORCHER L. TAYLOR, III, J.D. AND BETH ANNE SIMONDS

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In light of the apparent cover-up by the leadership at Eastern Michigan University (EMU) of a student rape and murder on campus, Congress should amend the Jeanne Clery Act. Specifically, a whistleblower protection section needs to be added to this landmark "sunshine" law.

All campus safety leaders and managers must acknowledge that every campus should be hospitable to good-faith whistleblowers 24/7. We suspect, however, that in the EMU case, potential whistleblowers who understood the facts of the crime were not encouraged to come forward. Instead, only after another student had been arrested for the attack and more than two long months went by did the campus leadership tell students and the public that the female victim had been raped and murdered in her dorm room. Prior to the suspect's arrest, EMU administrators insisted foul play was not suspected, even as the police were investigating several people.

If a whistleblower provision had been embedded in the Clery Act, EMU students and the public would have been alerted in a timely fashion to the imminent threat on campus. Additionally, the family of the female victim might have been spared some of the trauma it continues to experience.

EMU Whistleblowers Might Have Come Forward

Can we not believe that someone down the campus chain of command earnestly wanted to get the truth out, but might have been suppressed or felt suppressed from doing so? Might there have been a heroic whistleblower in the wings like Sherron Watkins, the former Enron vice president who exposed a corrupt company to investors and the nation?

To this day, she has paid a high price for her sterling integrity, in part because the whistleblower protection provision in the Sarbanes-Oxley Act (SOX) did not become law until about a year after Enron's implosion. SOX is the historic corporate reform law that holds senior business leaders personally accountable for accounting and securities fraud and crime.

Most significantly, Congress, in legislating SOX, gave its whistleblower protection section lots of enforcement teeth. Indeed, if a manager or leader in corporate America retaliates against, intimidates or harasses a good-faith whistleblower, that intimidator can get up to 10 years in federal prison and/or a \$250,000 fine.

Congress reasoned that potential retaliation in the business world, thanks to the likes of Enron and WorldCom, had now become tantamount to organized crime figures threatening grand jury and trial witnesses. The really big caveat is that Congress broadly defined "retaliation." We read that section of the law to mean that if a manager so much as sneezes at a whistleblower, he or she might be prosecuted.

University Employees Need SOX Protections

The EMU tragedy is a watershed moment for Clery, given its unprecedented circumstances. Sadly, the time may have arrived for Congress to treat campuses like corporate America and amend the Clery Act to have SOX-like whistleblower protection.

Campus safety personnel must resist any pressure from senior campus leaders to impede or water down Clery compliance. They should not allow their college/university presidents to become disengaged from Clery Act compliance under any circumstances. John A. Fallon III, the fired president of EMU, claims his subordinates did not tell him about the evidence of a homicide. Additionally, as a result of investigations of the cover-up by the university's board of regents and the Department of Education, the school's vice president for student affairs and the public safety director were fired.

In the meantime, if you are already on a campus that would welcome a whistleblower that sought to uncover a Clery Act violation, then your campus is well on the way to ensuring that an EMU-type case does not rear its ugly head on the campus safety landscape. It will be very difficult for your campus to ever stumble over Clery compliance at that moral altitude. Indeed, we owe nothing less to our parent and student stakeholders in helping them make informed decisions about campuses.

EDITOR'S NOTE: "As I See It" features the views and opinions of campus stakeholders — from police to administrators, teaching staff to students, consultants to vendors. The views expressed are solely those of the author. If you would like to submit an article or respond to someone else's, E-mail: robin.gray@bobit.com; or write: Campus Safety, Attn: Editor, 3520 Challenger St., Torrance, CA 90503.