"Whistleblower"
In the United States, legal protections vary according to the subject matter of the whistleblowing, and sometimes the state in which the case arises.
- Lloyd-La Follette Act (1912)
  - First US law adopted specifically to protect whistleblowers.
- Laws protect whistleblowers from employer retaliation.
- Problem: there are a patchwork of many laws (as opposed to one single one), many of which have a narrow window from when a person learns of misdoings to when they actually report it if they want protection.

Revealing of Classified Information
- A government official who reveals classified information to the public for their own political or ideological reasons, not to reveal to the nation a particular crime. This is illegal.

In a post-September 11th world, the federal government increasingly has invoked a "state secrets" argument to keep sensitive information out of court.
- Notably in disputes over warrantless surveillance and the secret transfer of prisoners to foreign countries for interrogation.

Why are things restricted from the public?
- The information may reveal methods of intelligence gathering (identity of spies, informants, etc)
- The information may reveal troop location, movements or even negotiating strategy
- The information may be reveal illegal or embarrassing acts, or may lead to unwanted public discussion of policies.

Concerns about the State Secrets Privilege
- Use of the privilege prevents transparency in government, the therefore accountability of government officials to the electorate.
- Federal trial judges often fail to make the government justify its use of the privilege.
- Due to little information, the public can not distinguish between legitimate and self-serving uses of the claims.
- Can we really trust the government to do that is right?

State Secrets Privilege allows the government to shut down litigation simply by invoking national security.
- The privilege was a particular favorite of the Bush administration, which asserted it in dozens of cases, including ones challenging the legality of extraordinary renditions and warrantless surveillance.
- In September 2009, the Attorney General issued a new state-secrets privilege policy that upheld the Bush administration's expansive view, but required high-level approval, instructed officials to try to avoid shutting down lawsuits if possible and barred its use with a motive of covering up lawbreaking or preventing embarrassment.

Criticism of the state secrets privilege
Since 2001, there has been mounting criticism of the state secrets privilege. Such criticism generally falls into four categories:
1. Weak external validation of executive assertion of privilege
2. Executive abuse of the privilege to conceal embarrassing facts.
3. Expansion of judicial doctrine
   - Some academics have criticized the expansion of the state secrets privilege from an evidentiary privilege (designed to exclude certain pieces of evidence) to a justiciability doctrine (designed to exclude entire lawsuits).
4. Elimination of judicial check on executive power

Usage of the state secrets privilege
- 1953-1976, the government invoked it in only 4 cases;
- 1976-2001, the government invoked it in 34 cases
- 2002-2006, the Bush Jr Administration invoked it in 23 cases.
- Unlike in prior usage, following the 2001 terrorist attacks the privilege is increasingly used to dismiss entire cases, instead of only withholding the sensitive information from a case.

Executive Order 13233
- Signed by Bush Jr, it extended the accessibility of the state secrets pledge to also allow former presidents, their designated representatives, or representatives designated by their families, to invoke it to bar records from their tenure form being released.

President Obama by executive order and Presidential Memorandum to agency heads stressed that “no information may remain classified indefinitely”
- He signaled that the government should try harder to make information public, if possible, including by requiring agencies to regularly review what kinds of information they classify and to eliminate any obsolete secrecy requirements.
- He established a new National Declassification Center at the National Archives to speed the process of declassifying historical documents by centralizing their review, rather than sending them in sequence to different agencies. He set a four-year deadline for processing a 400-million-page backlog of such records that includes archives related to military operations during World War II and the Korean and Vietnam Wars.
- Obama eliminated a rule put in place by President Bush Jr in 2003 that allowed the leader of the intelligence community to veto decisions by an interagency panel to declassify information. Instead, spy agencies who object to such a decision will have to appeal to the president.

United States v. Reynolds (1953)
The Supreme Court established the "state secrets" privilege, allowing the government to argue that certain military or national security documents must be protected from disclosure in litigation.
- The case began when three widows sued the government for negligence after a B-29 bomber exploded over Georgia during a 1948 flight to test secret electronic equipment.
- The widows of three civilian observers on board sought the 51-page accident report and statements made by surviving crew.
- The Air Force refused. After losing arguments that the documents should be shielded, the government appealed to the Supreme Court, where it argued that a judicial tradition existed for a privilege based on "state secrets."
- By a 6-3 vote, the court accepted the government's claim.
- Chief Justice Fred Vinson wrote for the majority, "Judicial experience with the privilege which protects military and state secrets has been limited in this country. ... Nevertheless, the principles which control the application of the privilege emerge quite clearly from the available precedents."
- Vinson cautioned, "The court itself must determine whether the circumstances are appropriate for the claim of privilege, and yet do so without forcing a disclosure of the very thing the privilege is designed to protect."
- In fact, in the Reynolds case, the court did not review the accident investigation documents to determine whether they should be kept secret. (The now-declassified report contains no secrets, and instead recounts how the engine failure was preventable, point toward negligence by the Air Force.)
The Bush administration conducts much of its work in the shadows. “Black site” detentions, extraordinary renditions, and domestic eavesdropping all happen in secret, and only by the grace of leaks and slipups do we know they happen at all. Most secrets stay secret. But for the last quarter century, at least we’ve known how many secrets were being kept, because of the Information Security Oversight Office, or ISOO, an internal government watchdog that keeps tabs on secrecy standards and the number of documents classified each year. Its data show that the shadows have been getting darker and bigger lately, and are now at least the size of those at the height of the Cold War.

In 2006 alone, the Bush administration classified no fewer than 20.6 million documents, up from ISOO’s recorded low of 3.6 million in the Clinton era. At that rate, with an average document length of 10 pages, the executive branch could fill an archive the size of the Library of Congress in just forty years.

Secrecy always grows during wartime, and the recent jump owes much to Iraq and Afghanistan. But classification also follows the rhythms of domestic politics. Information is power, so the saying goes, and executive-branch secrecy has the effect of hiding activities from Congress. The pace of classification can vary finely, even in individual government agencies, according to which party holds the White House and which holds the House of Representatives. For instance, the Department of Defense, whose employees tend to vote Republican, classifies zealously under Republican presidents, and even more when the Democrats control the House.

The oversight office monitors these trends and advises the president if classification efforts are threatening national security. But starting in 2003, the White House became the government’s most flagrant scofflaw: The Office of the Vice President simply stopped reporting how many staffers had the authority to classify and how often they exercised that power. Recent administrations have differed over how much secrecy is best. Reagan ordered agencies to err on the side of caution; Clinton urged them to classify sparingly. But some observers say the Bush Jr Administration’s commitment to secrecy stands out. Attorney General John Ashcroft issued a government-wide memo in 2001 pledging the Justice Department’s support for all legally defensible efforts to resist Freedom of Information Act requests. Thomas Blanton, who heads the National Security Archive, says, “A single query has animated all the choices this White House has made: Does this decision enhance presidential power or not! And if it increases presidential power, they go and do it.”

Leaving aside the blinkering effect it has on congressional oversight, too much secrecy impedes the routine functioning of the executive branch, by making useful information difficult for many government employees to see. It also makes leaks — both intentional and accidental — more likely, as civil servants take the top-secret stamp less seriously and lose track of what’s restricted.

Ironically, the vice president’s office itself has provided evidence of this latter danger. Representative Henry Waxman, the Democratic chair of the House Oversight Committee, has pointed out that Dick Cheney’s office has been involved in at least three major leaks since 2003: disclosing parts of the National Intelligence Estimate, passing secret information to coup plotters in the Philippines, and revealing undercover operative Valerie Plame’s identity. “It would appear particularly irresponsible,” Waxman wrote to Cheney in June, “to give an office with your history of security breaches an exemption” from government-wide regulations concerning classified information.

Even John Bolton, the former undersecretary of State and US representative to the United Nations – and a defender of extensive classification — acknowledges that the current classification environment is chaotic and likely to produce breaches. In a letter urging leniency for former vice-presidential chief of staff I. Lewis “Scooter” Libby, Bolton wrote, “It was frequently hard to know who was cleared to see what or what could be discussed with whom. If there is anyone who fully understands our ‘system’ for protecting classified information, I have yet to meet him.”

Source: The Atlantic, September 2007, pages 44-45

“Classify This – The Bush Administration’s Pathological Hiding of Information” by Greme Wood