

Preface

In the 1970s, the nation was riveted by emerging evidence that the administration of Richard Nixon had engaged in a series of corrupt activities on a massive, national scale. Much of these revelations were transmitted via the reporting of the *Washington Post*'s Bob Woodward and Carl Bernstein.

Woodward and Bernstein had an anonymous source, a prominent figure in government who spilled some of the administration's deepest, darkest secrets. The reporters, uncompromising about preserving this man's anonymity, famously dubbed him Deep Throat. It was Deep Throat who led Woodward and Bernstein on the investigative path that culminated in Richard Nixon's resignation in 1974. (Decades later it was revealed that Deep Throat was Mark Felt, a higher-up in the FBI.)

Deep Throat, in essence, was a whistleblower. The very term *whistleblower* has a huge range. Whistleblowing can have grand, national—and international—consequences as in the Nixon scandal and, in more recent times, in the high-profile cases of Edward Snowden, Julian Assange, and Chelsea Manning (known as Bradley Manning until her gender and name change announcement in 2013). Whistleblowers have uncovered systemic fraud at Wall Street financial institutions and myriad violations in the world of college sports. Karen Silkwood, who in the 1970s revealed shocking safety gaps in a nuclear-power plant—and paid for these revelations with her life—was the subject of a movie starring Meryl Streep. Erin Brockovich—the subject of a movie starring Julia Roberts—alerted the public to serious cases of harmful environmental contamination. Indeed, the list of whistleblower-movies is a lengthy one that includes *Serpico* (1973), *The Insider* (1999), *The Constant Gardener* (2005), *Michael Clayton* (2007), *The Whistleblower* (2010), and *Citizenfour*, the 2014 Academy Award-winning documentary on Edward Snowden. Whistleblowing, though, doesn't have to be so high-profile as to warrant books or movies. Whistleblowers can be found in the office, on the school board, in the family business, all with potentially high stakes. Whistleblowers often risk their livelihoods, their social standing, their families' futures—and sometimes their physical safety.

What is whistleblowing? As with any multifaceted issue, the definition varies depending on point of view. Although to some the term has come to have unpleasant connotations, akin to being a snitch, in the early 1970s, the pioneering consumer advocate Ralph Nader used the term to mean something not just respectable, but vital: a point of pride. The web site of Whistleblowing-CEE provides a commonly used explanation: when a current or former member of an organization discloses “illegal, immoral, or illegitimate practices under the control of their employers to persons or organizations that may be able to effect action.”

“This is the age of the whistleblower,” Matt Taibbi wrote in *Rolling Stone* (February 18, 2015). “[W]histleblowers are becoming to this decade what rock stars were to the Sixties—pop culture icons, global countercultural heroes.” *Time* magazine designated whistleblowers as persons of the year for 2002, including Coleen Rowley, who accused the FBI of failing to detect the signs of the impending attack on

the World Trade Center in 2001; Cynthia Cooper, “a WorldCom internal auditor, [who] alerted the company’s board. . . to \$3.8 billion in accounting irregularities. A month later, the telecommunications giant declared the largest bankruptcy in U.S. history;” and Sherron Watkins, who “sent memos in August 2001 warning Enron chairman Kenneth Lay that improper accounting could cause the company to collapse.” The company later filed for bankruptcy and suffered lasting notoriety. (Jamie Holguin, *CBS News*, December 22, 2002)

The resurgence of whistleblowing stems, in large part, from innovations and social changes that undergirded the 1960s and 1970s, which left a populace less inclined to accept the word of those in power. There was also the strong sense that something was amiss in the halls of government and in corporate boardrooms: the president was engaged in criminal activities; the FBI was spying on its own citizens; the environment was being destroyed. The prevalent corruption in political and social institutions has provided plenty of fodder for would-be whistleblowers.

Rolling Stone makes another, crucial point: “. . . one of America’s ugliest secrets is that our own whistleblowers often don’t do so well after the headlines fade and cameras recede. The ones who don’t end up in jail. . . or in exile. . . often still go through years of harassment and financial hardship.” In the financial sector, many whistleblowers “have seen their evidence disappeared into cushy settlement deals that let corporate wrongdoers off the hook with negligible fines.”

Whistleblowing-CEE makes the key distinction that whistleblowers are not informants. “Informants are often involved in some sort of unethical affair, and use disclosure for clarifying their own role, or reduce their liability. Governments often offer the chance of pardoning the crimes of people who report malpractices which they were involved in.” In other words, whistleblowers take on a great risk.

The motivations, circumstances, and consequences of whistleblowing are varied and far-ranging. “The question of when to remain quiet and when to speak out—and how to do it,” Alisa Tugend reported in the September 20, 2013, *New York Times*, “can be extraordinarily difficult no matter what the situation.” Luckily, according to Tugend, some significant steps have been taken to cushion whistleblowers from any potential damage to their lives and career. There has been “legislation rewarding whistleblowers for coming forth and protecting them against retaliation. The most prominent of those is the Dodd-Frank Act, which passed in 2010.” However, “in 2009, 4 percent of those who said they experienced reprisals for reporting wrongdoing cited physical threats to themselves or their property. In 2011, that rose to 31 percent.” Thirty-one percent is a staggering statistic.

Retaliation against whistleblowing takes many shapes. Tom Devine and Tarek F. Maassarani have chronicled responses from the corporate sector, beginning with the enforced assumption that “the power of the organization is stronger than the power of the individual—even individuals who have truth on their side.” There is the smokescreen tactic: “attacking the source’s motives, credibility, professional competence, or virtually anything else that will work to cloud an issue.” Another tactic is the formal reprimand, or isolating whistleblowers “by forcing them to work from home or take administrative leave with or without pay.” Whistleblowers can

be reorganized out of a job, or blacklisted so that they will never find comparable employment. The list goes on, and although great strides have been made, whistleblowing is still a risky business.

Some raise the point that whistleblowers might have a personal agenda, and be motivated by gripes against a nasty boss or coworker. Tugend quotes Stuart Sidle, the director of the Industrial-Organizational Psychology program at the University of New Haven in Connecticut: “I question someone trying to report externally before reporting internally. . . It’s too easy, now, to put up a video of bad behavior on YouTube or lash out on Facebook without ever speaking with the people who might be willing to resolve the problems.” Indeed, the Security Exchange Commission’s whistleblower program encourages employees to report malfeasance through internal channels first. In the end, most would agree that if the offenses are grave enough, personal motivations are irrelevant.

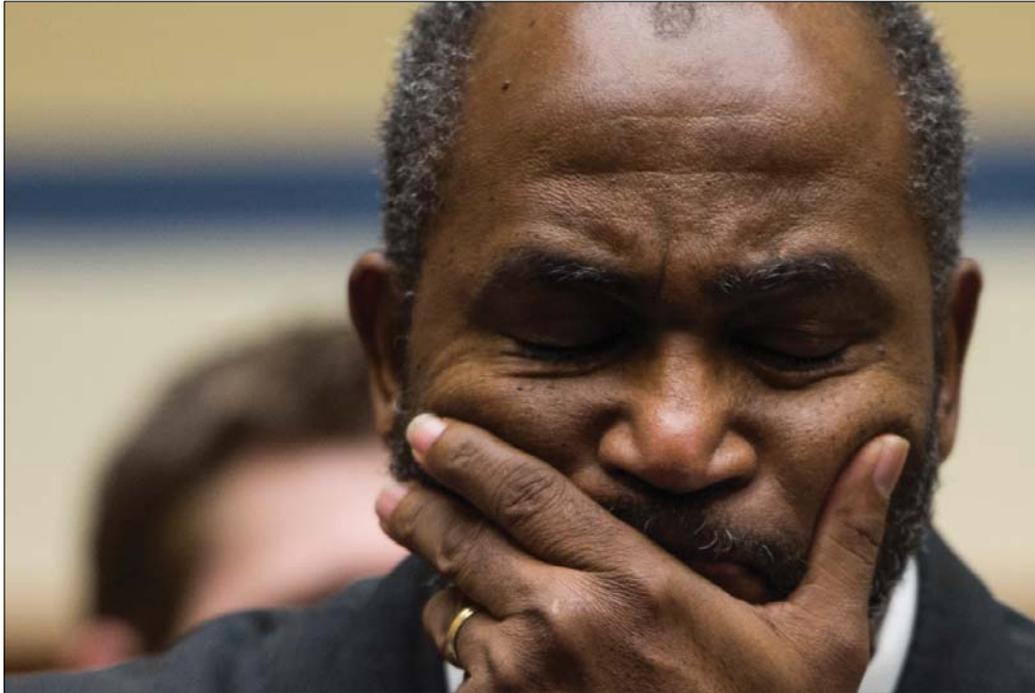
This volume contains a broad array of whistleblowing. Key topics include privacy rights, legal freedom, the nature of dissent, and matters concerning the media. Whether reading about the high-profile cases of Snowden and Manning or cases that will never reach the Supreme Court, the reader will discover a broad spectrum of opinion on these issues, issues that are certain to continue to dominate the national discourse.

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Ethical Obligations



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Community activist and whistleblower Frederick Newell testifies during the House Oversight and Government Reform Committee's Economic Growth, Job Creation, and Regulatory Affairs Subcommittee and House Judiciary Committee's Constitution and Civil Justice Subcommittee joint hearing on "The DOJ's Quid Pro Quo with St. Paul: A Whistleblower's Perspective," on Tuesday, May 7, 2013.

Building an Ethical Framework

The difficulties in deciding to go public and become a whistleblower are many. There is the concern of appearing credible, the understandable fear of retaliation, the worry over how one's livelihood or family will be affected. And then there are the vast internal struggles. "The whistleblower," Kirsty Matthewson writes, "is ultimately torn between loyalty to their employer (or the subject of their revelation) and their moral commitment to the law and society at large." Yet there is a consideration that is perhaps the most complicated of all: Is one *obligated* to report wrongdoing or criminal activity? Is silence a form of complicity? What framework is the potential whistleblower required—or not—to follow?

Some colleges and universities have mandatory honor codes—in which a student is required to report any cheating he or she may observe. Failure to do so results in a penalty sometimes as grave as the cheating itself. Lawyers and doctors are obligated to bring to light any cases of professional misconduct or outright malpractice. Although this often doesn't ease the burden on the whistleblower, there are procedures and precedent to fall back on, and if not procedure, a strong, entrenched sense of moral and professional obligation. "Many individual professionals," Myron Peretz Glazer and Penina Migdal Glazer have written, "have internalized the best of the professional ideology and remain deeply dedicated to serving the public good. Certain practitioners have always done outstanding pro bono work, served the poor, and insisted on the highest quality of service." *Do no harm*, after all, is the basic building block of medical ethics. The first canon of the code of National Society of Professional Engineering is that "the health, safety, and welfare of the public are to be placed first." (Mathieu Bouville, "Whistle-blowing and Morality") And then Myron and Penina Glazer add a caveat: "But advancement in the profession has not usually depended on such strict adherence to ideal standards." And, unfortunately, most cases when the whistleblower needs to step forward are rarely black and white and rarely as simple as adhering to professional guidelines.

The question of where an individual obtains that courage to risk potentially all will ultimately remain just that: a question. Myron and Penina Glazer discovered, not surprisingly, that individuals "who have a highly developed alternative belief system can withstand the intense pressure to conform. . . ." The belief system can be a religious orientation or a strict, unshakable moral code.

More often than not, it is an innate sense that something is fundamentally wrong. "A whistle blower once testified in a California court about how his boss had regularly ordered him to discard some of the company's toxic waste into a local storm drain rather than dispose of it properly," relate Judy Nadler and Miriam Schulman (Markkula Center for Applied Ethics). "Why, the judge wanted to know, had the man finally decided to step forward after having participated in this illegal

dumping for years. ‘Well,’ the man explained, ‘I was fishing with my grandson, and it suddenly occurred to me that the waste I was dumping was going to pollute the water so that he might never be able to go fishing with his grandson.’”

Whistleblowers also correct behavior or procedures that shouldn’t be in existence in the first place. “The certification of company accounts by senior executives should be a non-event,” the August 15, 2002, *Economist* opined. Financial statements have long been considered the authoritative, straightforward source to ascertain the health—good or bad—of a company. But corporate America, these last few decades, has been hit with one damaging scandal after another. (The film *Wall Street*, after all, is not about financial acumen, but about crime.) “America,” *The Economist* concluded, “no longer trusts its. . . leaders to tell the truth without being warned by the sound of prison doors slamming.”

Daniel Ellsberg was a brilliant defense analyst in the 1960s who attained a high level of responsibility in matters relating to American involvement in Vietnam. As the war went on, he became convinced of its catastrophic effect and went to enormous trouble and even greater risk to leak reams of confidential information to the *New York Times*. These were the Pentagon Papers—one of the single most famous instances of whistleblowing in American history. Ellsberg made the case that “there is no substitute for hard evidence: documents, photographs, transcripts.” (And today, of course, there is the Web, which has assumed increasing prominence when it comes to transmitting the work of whistleblowers.) “Often the only way for the public to get such evidence is if a dedicated public servant decides to release [the information] without permission. . . Leakers are often accused of being partisan, and undoubtedly many of them are. But the measure of their patriotism should be the accuracy and the importance of the information they reveal.”

There are, however, some guidelines and assistance. The whistleblower, contrary to some opinion, actually does have the law on his or her side. Contracts or confidentiality agreements—in the context of nefarious activities—need not be honored. It’s a crucial point: If the whistleblower is revealing illegal activity, he or she is providing a service. “Confidentiality contracts are not legitimate and should not be regarded to be ethically or legally operative,” writes Ben O’Neill of the Mises Institute, “when the confidentiality is *designed to protect secret unlawful actions* that are being taken by one of the parties.” O’Neill continues: “Broadly speaking, contracts cannot be regarded as legitimate if they involve agreement to perform an unlawful action, or an action designed to further an unlawful purpose. This is the basis on which one can regard whistleblowing as a lawful activity. . . .”

As per Jayne O’Donnell in *USA Today* (July 29, 2004), “Whistleblowers persist because that’s the way they are—a breed apart, driven by a desire to expose dirty executives, protect consumers or avenge wrongs they feel have been done to them.” Quite simply, it is a moral imperative: a sense of right and wrong. In many respects, whistleblowing is a logical continuation of childhood ethics: Play fair. Don’t lie. Don’t cheat. And certainly don’t steal.

“Professional ethics is in fact professional morality,” writes Mathieu Bouville. “Yet the dreadful retaliations against the messengers of the truth make it necessary

to bring the needs of the whistle blower back into the picture.” The brutal realities of going public can cancel out any moral formulations.

How do whistleblowers come to their decision to go public? Adam Waytz, James Dungan, and Liane Young conducted a study in which a “group of 74 research participants” were instructed “to write a paragraph about an occasion when they witnessed unethical behavior and reported it (and why), and. . . another group, of 61 participants,” was asked “to write about an occasion when they witnessed unethical behavior and kept their mouths shut. . . the whistle-blowers used 10 times as many terms related to *fairness* and *justice*, whereas non-whistle-blowers used twice as many terms related to *loyalty*.” The study highlighted the conflict between the desire to do good—to right the wrong—and the loyalty to the team. Often the whistleblower is exposing coworkers or supervisors, potentially putting the entire institution in a bad light. And other studies, interestingly, indicated that the focus of liberals is fairness, and loyalty is a more important criterion to conservatives.

One way to reduce the complexities of whistleblowing is, quite obviously, to eliminate the factors that make whistleblowing necessary in the first place. Lilianthi Ravishankar, also writing for the Markkula Center for Applied Ethics, lays out a convincing organizational blueprint—preventing whistleblowing by *encouraging* whistleblowing. If there is something seemingly counter-intuitive about this concept, there is also the practical application, which stems from a visceral question: How many of us would wish to be a part of a company or organization where whistleblowing is necessary? Ravishankar lays out some concrete steps: including “formal mechanisms for reporting violations,” an explicit policy against any sort of retaliation, “clear communications about the process of voicing concerns, such as a specific chain of command,” and a top-down endorsement that encourages a climate of support for any potential whistleblowing. Issues of right or wrong aside, there are also bottom-line considerations to buttress this open, encouraging attitude. “[C]ompanies are increasingly realizing that transparency and good business practices,” Matthias Kleinhempel writes, “both provide sound competitive advantages and minimize public exposure risks. . . .”

Whistleblowing cannot be untethered from a reformer’s ethos. “Few understand,” Brian Penny writes in *Fast Company*, “that they . . . are whistleblowers every time they suggest a change or improvement at work.” It is an enlightened, proactive framework: “Snitching on other employees may be seen as sinister, and your people may be embarrassed to speak up. Ensure you have a form, inbox, or number they can contact for anonymous tips. The police have prevented and solved a lot of crimes with this way; your business could flourish from anonymous tips as well.” Furthermore, according to *The Economist* (January 10, 2002), “the American government claims that most of the billions of dollars that it retrieves from those who defraud federal agencies come via whistleblowers’ reports. Many investigations carried out by antitrust authorities into illegal cartels, such as the recent vitamin price-fixing case in Europe, are initiated by reports from whistleblowers.” It’s an enlightened attitude, and whether adopting this attitude will become the norm among the powerful is an open question.

The many questions of whether to be a whistleblower—or not—unfortunately can't be resolved by the outside world. Certainly there are strictures: One needs to determine, first, that the motives for going public are not fueled by personal grudges, a desire to get even, or a thirst for fame (or infamy). And the potential whistleblower has to be absolutely certain he or she has explored every avenue of internal redress.

The ethical considerations of what—or not—to do carry the special burden that always exists: The burden of the internal struggle. And—ultimately—the sober conclusion is that the internal struggle is resolved alone.

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I Had to Do It

By David Morgan

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Think of films like *All the President's Men*, *Erin Brockovich* and *The Insider*.

These all tell the stories of whistleblowers whose place in the hall of fame seems assured. Through their disclosures they, rather than governments and leaders, have become the important ones.

But for most of the people I have seen—since becoming a volunteer consultant for a whistleblower charity—it is a very different story.

Most experience loss, not gain, through their actions. They have had their lives turned upside down, their places in their communities dismantled. They have lost their peace of mind and quite often faith in their own value and motives, as well as those of others.

So what motivates a whistleblower? Why risk so much?

Traitor or Hero?

As a term, “whistleblower” sounds vaguely pejorative—like a snitch. I prefer “social discloser”. In Germany there is no word for it; the expression used there translates as “traitor”.

In totalitarian states, like North Korea or Iran, hideous consequences for any perceived betrayals are to be expected. In the mature democracies of Europe, North America or Australasia, we expect a different set of mores.

But I am struck by the harshness of our societal attitudes towards those who break public laws or standards and undermine assumptions about the safety of our world.

Take the vehicle maker who discovers that his factory has been using seriously substandard materials. The economic impact of a scandal on his company, already on the brink of collapse, would be disastrous. He is in a position to make himself and all his colleagues unemployed. But he is also aware that the lives of vehicle users are at risk. He talks to, and is shunned by, his union and his bosses. But still he speaks out.

He receives death threats by mail and loses his job. His health begins to deteriorate. He is accused of having mental-health problems, which, of course, by now, he does. He goes to his member of parliament and is told that there is “no evidence” to support his claims. The MP and local newspapers are funded by interested parties.

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Think of the health workers who have spoken out about the effects of spending cuts and the culture of un-care that prevails in some British hospitals and nursing homes.

People like Margy Haywood, a nurse who, for the BBC's Panorama programme, covertly filmed the abuse and neglect of elderly patients in an NHS hospital. It was she who was punished, losing her nursing registration for "breaching confidentiality" while the staff who were abusing the patients were allowed to carry on working.

The emotional fall-out from revealing truths that others prefer to keep hidden is frequently underestimated. There will be powerful forces ranged against the discloser in order to maintain the status quo. Disclosers threaten the defenses and belief systems that institutions have developed to permit the behavior that is being exposed. Revelations can be experienced by the institution and colleagues within it as humiliating and attacking. These colleagues may see themselves as justified in retaliating against a whistleblower and there may be a concerted effort to discredit or pathologize her or him.

Paranoia?

"Is this place bugged?" asked the first discloser I worked with, referring to my consulting room.

Normally I would see such a concern as a fantasy, a projected form of aggression, externalized on to the outside world, where it then persecutes the originator from outside, in the minds of others or through delusions and hallucinations. Through externalization, the internal aggressive impulses are thus reduced and "put out to tender".

But when it comes to social disclosers the question "is my room bugged?" does not seem so delusional.

Undoubtedly, some of the people I see do exist in paranoid states of mind and some will have had traces of this before they disclosed. After they have blown the whistle they feel watched, their level of trust is low and it is easy to write them off as vexatious litigants and troublemakers.

Of course, not all whistleblowing is benign or altruistically motivated. Disclosure can be used to inflict revenge and humiliation. Stalled careers, failed love affairs or lack of a pay rise can increase the willingness of some individuals to shame or punish their communities, employers or families. But these are a small minority, in my view.

What is more likely is that the organization called into question by the whistleblower becomes dedicated to destroying the moral individual—and often succeeds. Disclosers are broken, unable to reconcile their actions and beliefs with the responses they receive from others.¹

In order to make sense of their stories, some whistleblowers must set aside the things they have always believed. For example: that truth is larger than the herd instinct; that someone in charge will do the right thing; that the family is a haven from a heartless world.

Any psychoanalyst will tell you that we project on to external authorities our internal versions of parental figures. When those parental figures are benign and fair-minded the failure of external authorities to live up to the projection can be devastating. Many whistleblowers recover from their experience but even then they live in a world very different from the one they knew before their confrontation with the organization.

Many people who disclose reasonably might expect some reward, praise, respect.

They often face disappointment. Often, we just don't want to know. Some receive support from their loved ones, others can feel persecuted by them, as they feel guilty or are made to feel that way for putting their families at risk.

It is useful for the whistleblower to have an understanding of group hostility to revelations that are threatening to cohesion. The discloser needs to find a way to maintain their [his or her] self-belief during these times of personal stress and marginalization.

They will also need help to understand the unconscious reasons for putting themselves in this situation in the first place.

Unable to Double

And that takes us to the heart of individual psychology, personal experience and unconscious motivation. Any previous emotional and psychological difficulties will be exacerbated or brought to the surface. Motives and personal integrity will be publicly questioned. Through reversal and projection the institution that is being called into question can evade any sense of responsibility for wrong-doing. The discloser is therefore made to feel that she or he is the wrongdoer, arousing serious self-doubt and depression.

In his book *1984* George Orwell used the term “double-think”. The psychological phenomenon behind this is called ‘doubling’. For example, you are a middle-level functionary in a bureaucracy or corporation and you possess some truth that you know does not conform to the agenda of your institution or boss.

Doubling—or “splitting” as I would call it as a psychoanalyst—means you can hold true to your personal morality while maintaining a separate public or institutional morality. At home you may never behave this way but at work telling the truth may hurt not only your institution but your livelihood and the health and safety of your family. In such situations, it is helpful to be able to hold contradictory positions to separate out your different selves and different loyalty structures. As US psychologist Fred Alford has noted, whistleblowers are often people who are unable to “split” themselves. The inherent contradiction would be too great and too painful.

German philosopher Hannah Arendt wrote of heroic individuals, people who talk seriously with themselves about what they are doing, people who cannot double, or do double-speak. They feel a compulsion to do the “right thing”.

As one patient told me: “I had to do it, I couldn't live with myself if I didn't speak up.”

The Bigger Picture

“A market economy thrives on inequality so self-interest will always triumph over the moral good,” observes philosopher, psychoanalyst and cultural critic Slavoj Žižek.

The whistleblower has to be vilified lest she or he expose the rottenness that we accept to maintain lifestyles often based on the suffering of others. Their lone voice is fulfilling a role in society that we are afraid to take.

We are never going to be able fully to decipher the motives of those who disclose. I am not sure we need to. We can argue about the personal stories of famous examples like Edward Snowden and Julian Assange.

Perhaps the most important thing to keep in mind is that societies which cannot tolerate disclosure and transparency are on their way to being totalitarian states. Whistleblowers therefore act as the conscience for us all.