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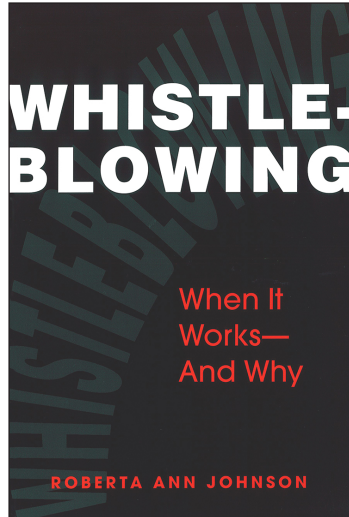
Whistleblowing:
When It Works—
And Why

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The Insider

Al Pacino stood in the rain with only a folded newspaper to shield him from the penetrating downpour. He was portraying the controversial television producer Lowell Bergman in the popular film *The Insider*. Visiting the home of a former tobacco executive, Pacino as Bergman aggressively tried to persuade him to appear on *60 Minutes* as a whistleblower.

But the beleaguered tobacco executive, Jeffrey Wigand (played by Russell Crowe), had signed a nondisclosure agreement and in violating it, he would lose all his company benefits. In the conversation that follows, Bergman captures the kind of choice the whistleblower faces.

Bergman: Why are you working for tobacco in the first place?

Wigand: I can't talk about it. The work I was supposed to do might have had some positive effect. I don't know. It could have been beneficial. Mostly, I got paid a lot. I took the money. My wife was happy. My kids had good medical, good schools. I got a great house. I mean, what the hell's wrong with that?

Bergman: Nothing's wrong with that. That's it. You're making money. You're providing for your family. What could be wrong with that?

Wigand: I always thought of myself as a man of science, that's what's wrong with it.

Bergman: Then, you're in a state of conflict, Jeff. Because here's how it lays out—if you got vital insider stuff that the citizens of the United States, for their welfare, really do need to know, and you feel impelled to disclose it and violate your agreement in doing so that's one thing. On the other hand, if you want to honor this agreement then that's simple. You say nothing. You do nothing. There's only one guy who can figure that out for you, and that's you, all by yourself.

Wigand decided. He came forward as a whistleblower and the drama of this story was captured on film.

Jeffrey Wigand had worked for the Brown and Williamson Tobacco Corporation (B&W) for four years. From 1989 to 1993, he was vice president of research and development, in charge of hundreds of scientists and workers, with an annual salary of about \$400,000. Wigand, who had a Ph.D. in biochemistry and endocrinology from the University of Buffalo, had been frustrated by B&W when he attempted to develop a “safer” cigarette, one with lower carcinogens (Miethe 1999: 200–201). Wigand also experienced the company’s stunning resistance to his recommendations for changing and removing cancer-causing tobacco additives and flavoring from their cigarettes. After he confronted the CEO on these health-related matters, Wigand was unceremoniously fired.

In 1994, Wigand became a whistleblower. Among his many allegations (Miethe 1999: 202), Jeffrey Wigand accused B&W of using additives to manipulate nicotine delivery, of editing out incriminating data from company reports, of intentionally misleading the public about tobacco’s addictive qualities, and of other serious wrongdoing. He exposed the company’s questionable practices, first with the Food and Drug Administration in the spring of 1994, and then with the U.S. Department of Justice, which was investigating the industry’s efforts to make a “fire-safe cigarette.”

Wigand testified as an expert witness in other cases, as well. Among these were a civil action lawsuit in Massachusetts, a libel suit in Virginia, and legal action filed against tobacco companies by the attorneys general of forty states seeking reimbursement for illnesses caused by smoking; the case was settled June 20, 1997 (Miethe 1999: 202; Rubin 2000).

Dr. Wigand’s insider testimony against the tobacco industry appeared in court documents, newspapers, and on television. The company retaliated against him with lawsuits and negative publicity. Wigand accused them of retaliating with physical threats.

How did this story find its way onto the CBS-TV show *60 Minutes*, the most watched news program in the United States? How did it become the theme of a Hollywood movie? A lot was determined by Lowell Bergman.

Lowell Bergman produced *60 Minutes*. Since the program’s inception in September 1968, nearly every *60 Minutes* has featured someone exposing unethical, dangerous, or corrupt activity. In fact, the program receives hundreds of solicitations each week from people wanting to be on to expose wrongdoing (Tedesco 2001).

Jeffrey Wigand had already been quoted on television and in newspapers, and had testified in court. Nevertheless, his appearing on *60 Minutes* represented a giant leap toward connecting with the public. At the peak of network television, in the late 1970s, *60 Minutes* had 30–40 million viewers. Even with the competition of cable television, at the time the Wigand program aired, it still reached a respectable 18 million (Tedesco 2001).

According to Lowell Bergman, it was “a fluke” that the movie *The Insider* got made at all. In the beginning of 1996, it wasn’t clear that the Wigand story would ever be aired on *60 Minutes*. Bergman was close to the point of leaving CBS and he started “talking to people in Hollywood.” Michael Mann, a Hollywood producer of such projects as *Crime Story* and *Miami Vice*, had been following the Wigand story at *60 Minutes*. Over the years, Bergman had brought him ideas he thought would make good movies, but they were always rejected. In January 1996, when Bergman told Mann it was “over for him at *60 Minutes*,” Mann said, “I think you got the movie.” “What is it?” asked Bergman. Mann answered, “It’s you.” He was serious and he was the reason “the movie happened” (Bergman 2000).

Jeffrey Wigand thought the picture accurately reflected the truth. He was flattered that Russell Crowe invested so much time and effort in his portrayal. “He does an exquisite job of portraying someone who is alive. It’s uncanny. He’s like a clone. There is a tremendous amount of accuracy and precision in replicating the feelings, the emotions, the psychological drama, the gait. He said he wanted to do me honor” (Rubin 2000).

For Bergman, it was only through Hollywood that the story was able to reach the movie-going audience. The filmmaker’s assumption, of course, was that *The Insider* would reach a sympathetic audience, an audience who might identify with, rather than condemn, whistleblowing. They were right. During the last three decades, whistleblowing had become a prominent part of U.S. vocabulary, culture, and organizational life. In fact, citizens in the United States blow the whistle on waste, fraud, and abuse more than anywhere else in the world.

Definition and History

Whistleblowing is a distinct form of dissent (Elliston et al. 1985: 3–15). There is an agreed-upon definition that has four component parts: (1) An individual acts with the intention of making information public;

(2) the information is conveyed to parties outside the organization who make it public and a part of the public record; (3) the information has to do with possible or actual nontrivial wrongdoing in an organization¹; and (4) the person exposing the agency is not a journalist or ordinary citizen, but a member or former member of the organization.

While there is general agreement as to who can be called a whistleblower, the term *whistleblower* used in this way has unclear origins. Miceli and Near believe that the whistleblower analogy “is to an official on a playing field, such as a football referee, who can blow the whistle to stop action” (1992: 15). Others have suggested that the term *blowing the whistle* derives from the caricature of the “bulbous-cheeked English Bobby wheezing away on his whistle when the maiden cries ‘stop thief’” (Branch 1979: 237).

Although the connection with games and cartoons may seem to give the word *whistleblower* a somewhat flippant feel, the term was used in a serious way starting in the 1960s to distinguish this set of “dissenters” or “inside informants” from informants who provided evidence against the Mafia, or former communists who “named names” for the FBI and assorted congressional committees (Glazer and Glazer 1988: 56). Activist and author David Bollier credits a conference organized by Ralph Nader in 1971 as having legitimized the use of the term for insiders who expose scandal (Bollier 2002).²

Since the early 1970s, whistleblowing has become a common means of describing dissent in a bureaucracy, particularly when issues of public health, safety, fraud, or abuse of office are involved. The United States has successfully exported the idea to the rest of the world, as we shall see in Chapter 6.

It is clear that for Americans, whistleblowing is a part of the cultural landscape. Whistleblowing has been a theme in Hollywood films such as *Serpico*, *Silkwood*, *Marie*, and of course *The Insider*.³ In addition, whistleblowers are often featured as heroes and experts on news shows. Currently, the most significant pattern related to whistleblowing is that it is on the increase.

So why are there so many whistleblowers in the United States? Five factors help to explain this phenomenon: (1) changes in the bureaucracy itself, (2) the wide range of laws that encourage whistleblowing, (3) the federal and state whistleblower protections, (4) institutional support for whistleblowers, and (5) a culture that often values whistleblowing.

Changing Bureaucracy

It is likely that changes within the bureaucracies themselves account for some of the increases in whistleblowing. One important change is in the job qualifications of bureaucrats. Whistleblowing seems to have been stimulated by the increasing educational level and professional training of public officials. Wakefield suggests that we are entering the age of the “specialist, expert, and technocrat”(1976: 663). Specially trained experts may feel that they have a distinct perspective on public problems and solutions, one that may be nonnegotiable. As one whistleblower confided, “Being trained as a scientist rather than a politician, I have never found negotiations to be a particularly satisfactory means of solving problems” (Pearson, cited in Frome 1978: 51). Hence, some professionals may be less prone than other officials to compromise when it comes to questionable decisionmaking or wrongdoing.⁴

Over the past several decades, the federal government has employed significantly larger numbers of scientists, engineers, and other professionals, partly to staff new or greatly expanded health, safety, and environmental programs in agencies such as the Environmental Protection Agency (EPA). A disproportionately high number of professionals engage in whistleblowing (Parmerlee, Near, and Jensen 1982), and Elliston et al. hypothesize that the activity is likely to occur when “higher standards are expected of professionals” (1985: 167). Professional employees may be required and may feel obliged to follow their professional codes of ethics (Westman 1991: 28).

Old organizations taking on new responsibilities may also induce whistleblowing. Elliston et al. identify organizational structures themselves as stimuli to whistleblowing. Whistleblowing, they say, is more likely to occur “when organizations rigidly conform to past practices rather than adopt new practices more suitable to their changed environments” (1985: 44). Wakefield also describes the “complex of new decisions which do not substitute for older decisions but are net additions.” This complex of new decisions adds to the bureaucrat’s repertoire of responsibility in new areas where rules are less certain; the uncertainty of rules can make whistleblowing more likely.

Elliston et al. explain the new uncertainty in a similar fashion. Whistleblowing is more likely to occur, they say, in organizations with “more technologically complex tasks,” and “new scientific and complex technologies and developments.” In such cases, there is likely to be

more uncertainty about the proper course of action to promote the public's interest (1985: 166), and also a greater prevalence of professionals who may disagree with the organization's decision.

Laws Encourage Whistleblowing

In the United States, whistleblowing is also encouraged by statute as an ethical duty. According to the Ethics in Government Act of 1978, as amended, and under the 1990 Executive Order 12731, federal agencies are required to provide ethics orientation to all federal employees. At these annual training sessions, employees are notified that they are required to disclose waste, fraud, and abuse to appropriate authorities.

In addition, in 1980, a Code of Ethics for Government Service (PL 96-303) was unanimously passed by Congress and was signed into law by President Ronald Reagan. It requires persons in government service to "put loyalty to the highest moral principles above loyalty to persons, party, or Government department" (Senate Antitrust Subcommittee of the Committee on the Judiciary 1983).

Furthermore, the creation of agency hotlines make it even easier for potential whistleblowers to act. In the early 1980s, consistent with the Ethics Code, federal hotlines were established in each federal agency to encourage whistleblowers to report government waste and fraud. For years, the Department of Defense (DoD) whistleblower hotline alone has received over a thousand whistleblower calls per month (Department of Defense Inspector General 1992: 4-1). Those using the hotline reflect a great variety of motivations and disclosures; there is no typical case. The following two experiences with the DoD hotline tell interesting stories about whistleblower tenacity and luck as well as hotline promise and limitations.

Tom Reay

Tom Reay was stationed on the USS *Fulton*, a submarine tender (repair ship). In 1986, he was in charge of the Division for Electronic Repairs. After four months, he began to notice that naval personnel were being "ripped off" on the price of parts. He began to go to "outside sources" to buy the pieces he needed. He kept a list of all the parts and their prices and his division began to save a lot of money.

About this time, he said, someone gave him the 800 DoD hotline

number and every Friday he would call with a list of two to five items he had purchased at a savings. It was done with such regularity that he began joking with the hotline operator, whom he got to know by name. He started calling the hotline in November 1986.

Reay's executive officer asked him what he was doing that was saving them money and then permitted him to continue. Others warned him that he "better watch out." His response, since he was not a career seaman, was "What will they do—kick me out?"

Reay left the navy in late 1987. In November 1988 a package from the navy was delivered to him and, at that moment, he admitted that he feared the worst—punishment for his initiative and his whistleblowing. Instead, the package contained a \$500 award for his "light bulb suggestion." It seems that a navy contractor had been charging \$18 for the tiny light bulbs used on control indicators. They burned out frequently and many needed to be purchased. Tom Reay had gone to Radio Shack and bought them for 15 cents each (Reay 1990).

Nancy Kusen

Nancy Kusen brought a much more complicated situation to the DoD hotline. She was an administrative contracting officer with the Defense Logistics Agency, Defense Contract Administration Services Management Area (DCASMA) in Pittsburgh, Pennsylvania. She had been working for the Department of Defense for over a decade when she tried to blow the whistle on agency wrongdoing.

For one year (1984–1985), Kusen reported to DCASMA management about suspected contract irregularities with Elliot Company, a subsidiary of United Technologies Corporation. DCASMA managers refused to recognize and correct the irregularities. The DoD Pittsburgh office of the Defense Criminal Investigative Service, whom she contacted, also chose not to intervene. For three and a half more years, Kusen tried to get the suspected wrongdoing addressed.

From June 1986 through March 1987, Kusen sent twenty-six letters to the DoD hotline. Twenty-four of her letters contained specific supporting documentation attached to them, including audit reports, progress payment requests, government contractor correspondence, and copies of contracts. Her allegations included fraud, collusion, overcharging, duplicate charging, and defective and substandard workmanship. What was at stake was an estimated 6–7 million recoverable dollars.

Ironically, when the hotline accepted her case, they referred it back directly for investigation to the same Pittsburgh office and special agent whose lack of investigation caused Kusen to turn to the hotline in the first place. A year later, the hotline investigators found her case not substantiated, and it was closed.

Articles about the abuses did appear in Pittsburgh newspapers, but they were not enough to make Kusen successful in her claim, and when she tried writing directly to Rear Admiral M. E. Chang, Office of the Naval Inspector General, the response she got was a dismissive, "Kusen, give up already." Meanwhile, Kusen experienced lowered performance appraisals and a denial of promotion.

Kusen's claims were finally validated, not by a hotline investigation, newspaper reporters, or the inspector general. Rather she was vindicated by an analysis of an independent group, the U.S. Navy Price Fighter Detachment, which conducted an independent "should cost" analysis. It compared what the Elliot delivery order for twenty-six rotor assemblies cost the government and what they "should have cost" the government. The overcharge for just one delivery order was a whopping \$133,317.60. The independent group's report was definitive and changed the outcome of the Kusen controversy.

Kusen's story ended happily for her. Four DoD managers, guilty of whistleblower reprisals against Kusen, were removed; Kusen received monetary and sustained superior performance awards and she was promoted to administrative contracting officer. Interestingly, with her promotion, she was made Elliot Company's new contracting officer (Kusen 1989).

As the experiences of Tom Reay and Nancy Kusen illustrate, whistleblower hotlines are an important feature of the U.S. bureaucracy. Hotline use was further reinforced in the administration of Bill Clinton and Al Gore by their March 1993 much-publicized "National Performance Review," which invited all citizens to call a hotline number to report bureaucratic waste. This call for a "national performance review" resulted in over 30,000 responses, most sent or phoned in during President Clinton's early months in office. Clearly, U.S. citizens were not afraid to use hotlines to blow the whistle on alleged or suspected wrongdoing.

In addition to laws that establish codes of ethics and hotlines, there are other laws that encourage U.S. whistleblowers. Under the Federal False Claims Act, some whistleblowers can be awarded 15–25 percent of the money their whistleblowing recovers for a federal agency. That certainly motivates some whistleblowers.

“To say I never thought about financial rewards is absurd,” said whistleblower Pat Shull, who received \$25 million as a result of exposing wrongdoing by the Bank of America in 1998 (Zuckerman 1998). The *San Francisco Chronicle* boldly announced, “Blowing the whistle on those who rip off the government has become a big business.” In 1996 alone, 360 whistleblower cases were filed with the U.S. Justice Department alleging fraud against the federal government. In fact, over an eleven-year period, the Department of Justice recovered more than \$1.8 billion in 225 cases; the whistleblowers involved collected \$200 million (Sinton 1997: E-1).

Laws Also Protect

Whistleblowers are also encouraged by federal and state laws that promise protection against retaliation. A wave of laws containing such employee protections were passed, beginning in the 1960s. During this decade, and those to follow, government efforts regulating business brought with them an expectation that employees would help in enforcing the new laws in areas such as environmental protection, public health and safety, and civil rights. Embodied in these regulations were various provisions protecting employees against retaliation (Westman 1991: 8).

Currently, the wide range of federal laws with such provisions include the Uniform Health and Safety Whistleblower Protection Act, the Occupational Safety and Health Act, the Savings and Loan whistleblower statute, the Toxic Substance Act, Superfund, and laws regulating mine safety, clean air, and clean water. In addition to these, there is also the important 1978 Whistleblower Protection Act. It was revised and strengthened in 1989 and in 1994, and will be discussed at length in Chapter 5, along with the other pertinent federal and state laws.

Individual states have joined in as well. By 1990, “twenty states . . . had statutes that protect public-sector employees from discharge in retaliation for reporting their employer’s unlawful conduct and ten states had enacted statutes protecting whistleblowing in both the public and the private sectors. By 1999, nearly all states provided some form of whistleblower protection and nearly all states had statutes protecting employees who reported violations of state and federal laws or regulations” (Egan 1990: 416–417; Miethe 1999: 108).

Support from Organizations and Institutions

News media, Congress, and helpful organizations all encourage U.S. whistleblowing. The example of Jeffrey Wigand illustrates not only how whistleblowers can be turned into heroes, but also how the media can contribute to this. According to James Q. Wilson, “The emergence of a new generation of reporters with a more adversarial stance toward government” has made journalists more attentive to whistleblowers (1989: 88).

Newspapers and television unfailingly assist whistleblowers. They tell their stories; they engage the public; they publicize and sustain interest in the alleged wrongdoing. Television and the popular press nationalize, popularize, and sometimes personalize a whistleblower story. Whistleblowers *need* media coverage.

Michael D’Antonio, in *Atomic Harvest* (1993), describes the important support the media has given to whistleblowers who exposed dangerous conditions at nuclear weapons facilities. He demonstrates with the case of whistleblower Casey Ruud, at the Hanford nuclear installation. In this case, Ruud turned to Eric Nadler, a *Seattle Times* reporter, to expose serious problems. Following a congressional investigation, “the entire industry was shut down,” with the help of reporter Keith Schneider of the *New York Times*.

Media coverage allows whistleblowers to establish their credibility and legitimacy for their cause while stimulating public interest. As already described, the television news magazine show *60 Minutes* has often used whistleblowers because of the program’s muckraking format.

However, Nancy Kusen’s case also illustrates how media coverage, while very important for the whistleblower, does not guarantee a positive outcome. Although Kusen’s allegations were described in the sustained reporting of Pittsburgh newspapers, she needed other support to make her case.

In addition to extensive media coverage there are two institutional factors unique to the United States that help explain the country’s significant and growing number of whistleblowers. These two contributing ingredients are: (1) the system of divided government (checks and balances), and (2) the American propensity to form organizations.

Checks and Balances

In terms of institutional arrangements, the whistleblower benefits from the unique system of divided government in the United States. The U.S.

nonparliamentary system separates the legislative body from the executive branch to create constitutional “checks and balances.” The executive and legislative branches are real institutional rivals and adversaries. This is even more so when the two branches are of different political parties.

An important way the legislative branch can flex its muscles vis-à-vis the executive branch is through congressional oversight of the executive agencies. Whistleblowers who come forward with insider information are their star witnesses. Congress holds public hearings, getting testimony on inefficiency, illegalities, abuse, and wrongdoing from whistleblowers. The information and the publicity they provide gives the legislature entrée into what the agency does and can be harnessed to legislative ends. It is no surprise that, regardless of what political party controls Congress, whistleblower protection legislation is always unanimously passed. It serves the interest of the legislature because Congress can elevate, legitimize, and publicize whistleblowers and their concerns and, at the same time, forward their own.

Congress has enhanced its right to know while protecting their whistleblowers. In 1988, Congress passed two federal statutes, one that protects witnesses in congressional investigations from intimidation (18 U.S.C. 1505) and another that specifically guarantees federal employees the right to provide congressional members with information (5 U.S.C. 7211).

In 1989, with the help of Representatives Patricia Schroeder and William Coyne, whistleblower Nancy Kusen gave testimony at a congressional hearing for a House subcommittee whose focus was hotlines and whistleblower protection. After years of frustration, speaking in this public forum allowed Kusen to reestablish her credibility while the visibility probably helped protect her from further reprisals.

This was also the case with Jennifer Long, who was “the star witness at the 1997 hearings before the Senate Finance Committee that examined alleged abuses by the IRS.” As an auditor with the IRS, she testified in Congress that her agency “harassed” taxpayers (Associated Press 2001: A-8). Long was the only IRS whistleblower who did not use a protective screen or disguise her voice to conceal her identity. Her testimony was given in nationally televised hearings.

In 1999, following Long’s public insider testimony, the IRS tried to fire her, and in 2001 they tried to block her being licensed by the Texas Board of Public Accountancy. But each time she was targeted by her agency, she was protected from their retaliatory action by an inquiry or

a well-publicized letter to the IRS commissioner from a member of Congress (Associated Press 2001: A-8).⁵

Congress has instituted specific agency reporting requirements related to whistleblowing. In 1978, with the passage of the Inspectors General Act, Congress not only mandated executive agencies to establish hotlines, it also required each agency's Office of the Inspector General (IG) to produce a "Semiannual Report to the Congress," which included a discussion of agency whistleblower activities and protections. The IG reports from the Department of Defense, for example, even included illustrations of substantiated whistleblower reprisal cases.

Organizations

In addition to the news media and Congress, an important third factor contributing to the country's unique institutional context for whistleblowers relates to Americans' propensity to form groups. Today, nongovernment whistleblower organizations abound. They encourage, support, and sometimes even fund whistleblower efforts and help make the whistleblower feel less isolated and more empowered.

As we have seen, the Nancy Kusen case was made and saved by a nongovernment group, the U.S. Navy Price Fighter Detachment. Their independent analysis, which revealed significant discrepancies and blatant overpricing, proved the pattern of overcharging that Kusen had alleged. This nonprofit organization, like hundreds of others, helps and serves whistleblowers.

Other organizations have been created whose focus is on the work of particular agencies. For example, the nonprofit organization Forest Service Employees for Environmental Ethics, based in Eugene, Oregon, has a membership primarily of former employees of the Forest Service. They encourage whistleblowers and they act as a watchdog for the agency. In addition, the group Public Employees for Environmental Responsibility (PEER), which has state chapters made up of federal agents in various states, provides whistleblower support for Department of the Interior and Army Corps of Engineers employees. Another example is the National Association of Treasury Agents, which acts as a support base for Treasury Department whistleblowers.

Some professional organizations have focused on whistleblowing. The Tucson-based Arizona chapter of the American Association of

University Professors (AAUP) has, in fact, made reform of whistleblower protection its major goal and has assisted in protecting the careers of a number of university whistleblowers.

Another professional organization involved in aiding whistleblowers is the American Association for the Advancement of Science (AAAS). AAAS has used its prestige to lobby for increased whistleblower protection and has assisted scientists who were fired or disciplined for exposing violations of federal environmental regulations. Whistleblowers have also been recipients of the AAAS Scientific Freedom and Responsibility Award.

Some organizations, and even some individuals, have offered financial support to whistleblowers. The *PA Times*, a public administration newsletter, announced in their June 1989 issue that an endowment fund had been created by an individual that would award \$10,000 to three whistleblowers per year (McCormick 1989: 3).

Many groups specialize in particular services. Taxpayers Against Fraud, established in 1986 and based in Washington, D.C., specializes in and has been extremely successful in helping individuals pursue False Claims Act lawsuits. Since 1981, the nonprofit organization Project on Government Oversight (POGO, formerly the Project on Military Procurement), also in Washington, D.C., has provided emotional support and sometimes independent investigations for government whistleblowers whose cases are not widely publicized. Finally, Integrity International, created by psychologist Don Soekin, has provided psychological support and needed coaching on due-process requirements for dozens of whistleblowers.

In the mid-1990s, the National Whistleblower Center emerged. A Washington, D.C.-based nonprofit organization, it offered information and services that included training seminars on whistleblower laws; CD-ROMs on the latest court decisions on whistleblowing; a whistleblower litigation handbook on environmental, health, and safety claims; and an attorney referral service and help line. Their quarterly newsletter was first published in winter 1994. In addition to nuclear and medical areas, they specialize in FBI whistleblowing.

The Government Accountability Project (GAP) is the most impressive whistleblower organization because of its long track record and its participation as a witness in congressional hearings and as an expert in General Accounting Office reports. GAP is the premier whistleblower organization in the United States. In fact, GAP "alumni" have spun off

to form other organizations, and as we will see in Chapter 6, GAP is in the process of educating and training about whistleblowing around the world.

GAP was created in 1977. Its purpose was to hold the federal government accountable by assisting whistleblowers who challenge policies and practices that threatened public health and safety and the environment (Government Accountability Project 1989b: 1; Clark 1988: 1). They pursue their mission in the United States through counseling, by offering legal expertise, by conducting investigations to help expose cover-ups, by working to strengthen whistleblower laws, and by disseminating information and publishing scholarly articles (Devine and Morales 2001).

GAP's annual budget is close to \$1.5 million, and through the years it has helped hundreds of whistleblowers with legal assistance. There are many things that illustrate GAP's success and level of integration into mainstream political activities. The most impressive, perhaps, is that GAP is considered an expert by government agencies such as the General Accounting Office (GAO), by members of Congress who use GAP testimony about whistleblowing in their reports, and by the U.S. State Department, which has sent GAP personnel to other countries to publicly advocate for whistleblowing. In addition, GAP has been a reputable source of information for newspapers such as the *Wall Street Journal*. Even actor Robert Redford has expressed his support and is quoted in some of their solicitation letters sent to potential donors.

Cultural Values

The shift in cultural values provides, perhaps, the most important explanation for the large increase in numbers of whistleblowers in the United States. Over the last few decades, U.S. attitudes toward whistleblowing and whistleblowers have changed. Loyalty to team and group has always been valued in the American culture, not only on the children's playground but also in corporate boardrooms and public agencies. Some have argued that loyalty is especially important in a government agency because "the disloyal employee can hurt the collective interest of the organization by damaging its *image*, the public face on which an appropriation usually depends" (Branch 1979: 232).⁶

As the number of whistleblowers has increased (U.S. Merit Systems Protection Board 1993: 9) and as government and media



"I'm only a finger-pointer now, but someday I'll be a whistle-blower."

reports about them have also increased, the public's attitude toward whistleblowing appears to have grown more supportive. Even mainstream cartoons are positive about whistleblowing and while the exposed agencies may continue to characterize whistleblowers as disloyal (or worse), media coverage and congressional attention often present the same whistleblowers as heroes. As we have seen, whistleblower Jeffrey Wigand was popularly portrayed as a hero to the public although he was clearly viewed as a traitor in the tobacco industry.

A strong belief in individualism is part of the American personality (Patterson 1998: 4; Ketab 1992). The public's receptivity to whistleblowing is supported by this long-held belief. As Robert G. Vaughn observes, "Whistleblowing is a highly individual undertaking even when several employees are engaged in it; it relies on personal decisions about its propriety and a willingness to accept the risks attendant to it" (1999: 587).

This connection to the traditional American value of individualism may be especially stimulated by popular press coverage and academic studies of whistleblowing, which often emphasize the personal suffering and isolation the whistleblowers experience because of their courageous exposure of wrongdoing (Nader, Petkas, and Blackwell 1972; Glazer and Glazer 1989; Frome 1978; Branch 1979; Weisband and Frank 1975; Senate 1983). Whistleblowers themselves relate and connect to the value of individualism. For example, Jeffrey Wigand believed that the fundamental message of his story was that "an individual can take a stand and make a difference" (Rubin 2000).

The U.S. public is also able to see whistleblowers in a positive light and as heroes because of a general cynicism and a lack of trust in government. Goodsell has described these feelings (1994) and they have increased steadily since the late 1960s (Patterson 1998). Glazer and Glazer point to "public disillusionment," "cynicism," and "skepticism" (1988: 57), and Louis Harris even called this lack of trust in government a "full-blown crisis of confidence" (Cooper 1979: 77). The American public's more recent less cynical attitude, reflected in surveys conducted post-September 11, 2001, is very likely just temporary.⁷

There is a third factor contributing to the public's more positive spin on whistleblowing. Whistleblowers increasingly are raising health and safety issues that people personally care about. This also helps explain the public's receptivity toward whistleblowing. Elliston et al. suggest, for example, that whistleblowing is "more likely to occur when

there is increasing public concern for environmental, health, and safety problems” (1985: 167) and when there is concern for the government’s effectiveness in monitoring hazards and maintaining safety standards (Glazer and Glazer 1988: 57).

Allegations of an unsafe nuclear power plant, unsafe food or water, insufficient protection from pollutants, or unsafe aviation practices are problem areas that are of great interest to much of the general public. Exposing danger, abuse, inefficiency, or wasteful spending in these areas, even by a whistleblower, might be appreciated as a kind of public service.

This was the case in the following example where a small community turned a local whistleblower into a hero.

Aaron Ahearn

Aaron Ahearn became a whistleblower. He was a sailor who served on the USS *Abraham Lincoln*. Originally from Santa Cruz, California, he blew the whistle on the ship’s excessive polluting.

The USS *Abraham Lincoln* is the world’s largest carrier. It generates a half a ton of plastic trash each day. Whistleblower Ahearn exposed the ship’s practices of throwing the plastic garbage overboard and of discharging raw sewage closer to shore than the allowable three nautical miles. In an effort to change policy, he complained to his supervisors and confided in the ship’s chaplain, but to no avail. When he became a whistleblower and went AWOL to protest the ship’s practice, his story was picked up by CBS news. Ahearn’s position was simple: “I grew up surfing in Santa Cruz and was taught not to pollute.”

The Santa Cruz community made him their hero. A San Francisco weekly newspaper reported that “after the ecology-minded surfer from Santa Cruz went AWOL in February, he received a hero’s welcome in his hometown where fundraisers were held in his honor and the Board of Supervisors passed a resolution supporting him” (*San Francisco Weekly* 1993).

Scandal and Catastrophe

Scandal and catastrophe have hurried the public’s acceptance of whistleblowing. The 1986 space shuttle *Challenger* disaster, which will be more fully discussed in Chapter 2, has been called a “milestone event for whistleblowing” because it stimulated a groundswell of public

support and public interest in whistleblower protection reform (Clark 2002).

According to Louis Clark, executive director of the Government Accountability Project, the demotion of three Morton Thiokol engineers because of their whistleblowing testimony to an investigating government commission (the Rogers Commission) caused Congress to “get the message.” The public was alarmed, grieved the *Challenger* tragedy, and supported the whistleblowers. “As a response to their constituents,” Clark said, “Congress flipped into an interest in whistleblower protection,” and soon after they revised and strengthened whistleblower laws. The resulting congressional reforms, passed in 1988 and 1989, are described in Chapter 5.

More recently, the Enron collapse and scandal in 2001, with fallout continuing into 2002, also stimulated public interest and support of whistleblowing (Chaddock 2002; Mayer and Joyce 2002). Enron’s questionable corporate practices were front-page news and so were reports of public disillusionment and skepticism about corporate behavior (Fineman and Isikoff 2002; Stephens 2002; Graf and Orr 2002; Bayon 2002; Schmidt and Behr 2002; Yardley 2002; Pender 2002; Oppel 2002). Emerging from the mess and making front-page news herself was Enron vice president Sherron S. Watkins, who was characterized as a lone whistleblower,⁸ and whose testimony was the centerpiece of well-publicized congressional hearings (Nusbaum 2002; *New York Times* 2002; Lochhead 2002; Dowd 2002; Abramson 2002).

Public outrage and constituent anger over Enron stimulated many members of Congress to begin to consider seriously whistleblower protection legislation for employees of publicly traded companies (Senate 2002: S1785) and to consider legislation—aptly referred to as the “Paul Revere Freedom to Warn” act (Clark 2002; Chaddock 2002)—that provided a jury trial in federal district court for government and private-sector whistleblowers who are harassed for going to Congress with information, (Government Accountability Project 2002a: 7). The scandal also stimulated a skyrocketing number of whistleblower complaints, including a dramatic rise in complaints to the Securities and Exchange Commission (Fairbanks 2002).

By April 2002, “two of the nation’s largest firms that maintain hot-lines for other companies” (Pinkerton and Network) were reporting “a noticeable increase in employee calls.” Since the Enron scandal, Pinkerton Consulting and Investigations, a company responsible for



*"You know how to whistle, don't you? Just pick up
the phone and call the S.E.C."*

maintaining hotlines for approximately 1,000 companies, reported a 12 percent rise in calls; Network Inc., which maintains toll-free hotlines for approximately 650 companies, reported that their calls were up 35 percent (Mayer and Joyce 2002: H-4).

Post–September 11

Public safety has always been an important motivator. In the early 1990s, federal employees were surveyed on the factors that might cause them to report illegal or wasteful activities. Fully 96 percent of the 13,000 respondents labeled as “very important” activities that might endanger people’s lives (U.S. Merit Systems Protection Board 1993: 10). However, while concern with public health and safety has always been a strong motivator for whistleblowers, it is an even stronger factor in the aftermath of September 11, 2001. The marked increase in whistleblowing following the September attacks may reflect the addition of a new ingredient—a sense of patriotic duty (Morrison 2001).

Following September 11, GAP’s whistleblower intake calls tripled. Growing numbers of whistleblowers were concerned about homeland, aviation, and nuclear security. For example, a Federal Aviation Administration official alleged bureaucratic negligence and security breaches at airports around the country; a former Customs special agent expressed concern over inadequate inspection and border security related to railcars; and an expert at the Department of Energy reported concerns about safeguards against attacks at nuclear weapons facilities.

These and other cases were being treated seriously by the public, by members of Congress, and by the press. By December 2001, the Office of Special Counsel (OSC) had opened four investigations of alleged retaliation against federal employees who had voiced national-security concerns. Such a quick response by OSC “often indicates the case has merit” (Morrison 2001: 1; Government Accountability Project 2002b).

Tying It All Together

In the United States, people blow the whistle on waste, fraud, and abuse more than anywhere else in the world. It was in the United States, after all, that the term *whistleblowing* itself was coined. This chapter has explored the cultural and institutional factors that help account for the large number of U.S. whistleblowers.

Of course, there is whistleblower protective legislation and there is mandated government ethics training, which encourages employees to expose wrongdoing. But other countries have protective legislation with nowhere near the numbers of whistleblowers, and besides, as we will see in Chapter 5, studies of whistleblower protection suggest that the protection offered is far from perfect.

U.S. whistleblowers may be encouraged to act by the promise of financial gain. The Federal False Claims Act promises the whistleblower 15–25 percent of the money their agency recovers because of their whistleblowing. However, this law only accounts for a fraction of U.S. whistleblower cases and a large government study suggests that it is not a major motivator (U.S. Merit Systems Protection Board 1993: 10). Thus, financial gain is not as important as other uniquely American institutional and cultural factors in explaining the whistleblower phenomenon. Clearly the most important factor is the United States' changing attitude toward whistleblowing.

The U.S. public seems to have shifted to a more positive point of view about whistleblowing. This has been due, in part, to the increase and positive spin of media coverage. Newspapers, magazines, and television news shows often report about whistleblowing and feature whistleblowers as public-interest heroes. The positive spin the media gives to the individual whistleblower is likely to resonate with the general belief in “individualism” and a general distrust of government, helping connect U.S. citizens to the whistleblower experience.

In addition, whistleblowers who are credited with exposing dangers or health hazards are often seen as performing a public service. Thus, during the last three decades, whistleblower stories have become more numerous and are viewed more positively. Today, the U.S. public is more sympathetic to whistleblowing.

Changes within the bureaucracy itself also help stimulate whistleblowing. Government bureaucrats are increasingly better educated and trained. Many are scientists, engineers, and other professionals, and it is the government workers who are professionals who are more likely to be engaged in whistleblowing. In addition, older bureaucratic organizations are involved in expanding government activities and some newer government agencies are involved in public health and safety. Expanding into new areas, the bureaucratic “rules of the game” may be less certain and the health and safety stakes may be higher. This combination is likely to encourage whistleblowing.

Two other factors—institutional checks and balances and the exis-

tence of large numbers of support groups—also contribute to the large and growing number of U.S. whistleblowers. These factors are unique to the United States but are rarely credited for contributing to whistleblowing.

Constitutional checks and balances include congressional oversight authority over the executive branch. In the process of pursuing their oversight role, Congress has gratefully received documents from whistleblowers that would not normally be available to them. Congress needs whistleblowers. More and more, Congress has become responsible for aiding and protecting whistleblowers and giving them credibility and a platform. It is no surprise that regardless of party or ideology, Congress always passes whistleblower protective legislation unanimously.

The United States' unique propensity to form groups also significantly contributes to whistleblowing. Whistleblowers can tap into a network that offers professional, financial, psychological, legal, and technical help from hundreds of groups available to offer advice and support. This means that, unlike whistleblowers in most other countries, U.S. whistleblowers are not alone. A ready network of assistance and support may also help create a climate that encourages whistleblowing activity.

Further, agency hotlines, another distinctly U.S. innovation, appear to stimulate whistleblowing. This occurs regardless of their many deficiencies, including the fact that large numbers of government employees either do not know about their agencies' hotlines or if they know about them, do not trust their safety. In fact, as the Kusen case demonstrates, and as we will see in Chapter 5, hotline investigations have surely been imperfect at fully protecting whistleblowers and have often been sorely inadequate in getting to the truth. Nevertheless, record numbers of government employees continue to contact hotlines each month and federal agencies regularly claim large savings because of these hotline calls.

It appears that, however inadequate and unfair hotlines may be, just the fact of their existence, the activities that surround them, and the scrutiny the hotlines get from Congress and other government and non-government agencies contribute to an environment that encourages whistleblowing.

Finally, the tragedy of September 11, 2001, and the scandal and collapse of Enron, WorldCom, Global Crossing, and the like, have created an atmosphere even more conducive to, and supportive of, whistleblow-

ing. The calamity and scandal have shaken the economy and have caused the U.S. citizenry to be on high alert. More whistleblowers can be expected to come forward with serious public concerns.

The Organization of the Book

The next chapters will lead the reader into the complex world of whistleblowing. Chapter 2 will explore how individuals make the decision to blow the whistle, while Chapter 3 investigates the conditions required for whistleblowers to actually succeed in changing policy. Chapter 4 illustrates how an agency has “improved” as a result of the efforts of a whistleblower, and the focus of Chapter 5 is legal protection. Finally, Chapter 6 expands into the global arena, describing how the United States’ support of whistleblowing is having a worldwide impact.

Notes

1. The “wrongdoing” Congress had in mind when it protected whistleblowers’ free speech in the 1978 Civil Rights Reform Act was “illegality, abuse of authority, mismanagement, gross waste or substantial and specific danger to public health or safety” (Civil Service Reform Act of 1978, PL 95-454).

In 1992, the General Accounting Office, in their Whistleblower Protection survey of federal employees (GAO/GGD-92-120FS), used the summary term *misconduct* to define a protected disclosure under law (5 U.S.C. 2302 [b] [8] A). They defined it as “a violation of any law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or acts of substantial and specific danger to public health and safety.”

2. “While it was not an entirely new phenomenon for insiders to expose scandal within their organizations, according to David Bollier, “the [1971] conference helped give the behavior a new name and identity—‘whistleblowing’—and publicly legitimized the behavior.”

3. *Serpico*, a 1973 film directed by Sidney Lumet, stars Al Pacino, Tony Roberts, and John Randolph; *Silkwood* is a 1984 film directed by Mike Nichols, starring Meryl Streep, Kurt Russell and Cher; *Marie*, a 1986 film directed by Roger Donaldson, stars Sissy Spacek and Keith Szarabajka.

4. James Q. Wilson, in *Bureaucracy* (1989), describes how professionals hired to work in government agencies can bring with them the distinct cultural values of their profession. He calls these “professional norms” and “beliefs” (pp. 86–88). Professional standards, of course, can vary and are not guaranteed to stimulate whistleblowing. CPAs are an example. On January 19, 2002, with the backdrop of the Arthur Andersen and Enron scandals, *San Francisco*

Chronicle reporter Arthur M. Louis argued that CPAs, as a professional group, are *not* likely to be whistleblowers; they are more likely to quit their jobs. “When auditors unearth accounting behavior that they consider fishy,” Louis wrote, “and if they can’t get their management to make changes, their normal practice is to resign the account without fanfare” (Louis 2002: B-1, B-2).

5. “As millions of Americans were filing their returns on tax day [April 1999], the Houston office of the IRS was in the process of firing the first internal revenue agent to publicly blow the whistle about agency abuses,” reported the *New York Times*. Jennifer Long had been served with a letter, a sixty-day warning that was tantamount to a notice that she would be fired. Twenty-three hours later, the letter was withdrawn because the chair of the Senate Finance Committee, Senator William Roth, protested the action to the new tax commissioner, Charles Rossoti. Two years later, the Associated Press reported a similar intervention. In February 2001, IRS officials did not fill out a routine character form for Jennifer Long to be sent to the Texas licensing regulators. Instead, they sent them a letter critical of whistleblower Jennifer Long’s work. But Republican senator Charles Grassley, new chair of the Senate Finance Committee, wrote to the IRS commissioner of his concern that their criticism of Long to the Texas licensing regulators looked like a first step toward her termination in retaliation for her testimony as a congressional witness. The critical IRS letter was never sent.

6. In order to attract and enhance their image and with it public support, government agencies have even collaborated with television and movie producers. While there is a history of such cooperation from the FBI and the Pentagon (J. Edgar Hoover was very involved with the TV series *The FBI*, and the Pentagon helped the filmmakers of *Top Gun* and *The Hunt for Red October*), the CIA is now working “regularly with filmmakers, television producers and writers it considers sympathetic,” according to Elaine Sciolino in the *New York Times*. The CIA headquarters in Langley, Virginia, are even being used for a CBS-TV series, *The Agency*.

7. In the months just following September 11, surveys found U.S. citizens significantly less cynical. Responding differently to questions about trust, 51 percent “expressed greater confidence in the federal government in 2001 than they had a year earlier” (Putnam 2002). But these survey results also suggested that this new mood of trust expressed itself “primarily through images” and not with a fundamental change in civic practice. For example, “much of the measurable increase in generosity spent itself within a few weeks” after September 11 (Putnam 2002). Therefore, it is not at all clear that an increased feeling of public trust in government (post-September 11) will continue; the old cynicism is likely to be lurking beneath the surface.

8. Using the standard definition of whistleblowing, Sherron Watkins was not technically a whistleblower; when she wrote her memo, she did not intend for her concerns about Enron practices to be exposed to the public and to the press.