

~~Courage Without Martyrdom~~

The Whistleblower's Survival Guide

Government Accountability Project

CONTENTS

<i>Introduction</i>	1
1. Deciding to Blow the Whistle Deciding How Loudly to Blow the Whistle Blowing the Whistle Wisely	3
2. What to Expect: Classic Responses to Whistleblowing Targeting Dissenters: The Tactics of Retaliation Neutralizing Dissent: The Tactics of Cover-up	27
3. Where and How to Blow the Whistle Official Channels Federal Hotlines Corporate Voluntary Disclosure Programs Incentive Suggestion and Other Cash-Awards Programs Inspectors General The Office of Special Counsel Congress The False Claims Act The News Media Advocacy Organizations	49
4. Choosing and Working with an Attorney	105
5. Understanding Your Legal Protections—and Their Limits The Civil Service Reform Act The Whistleblower Protection Act 1994 Amendments to the Whistleblower Protection Act The False Claims Act Protections Under State Law for Private and Public Sector Employees Piecemeal Federal Protections for Private and Public Sector Employees The Military Whistleblower Protection Act Whistleblowing When You Have a Security Clearance	115

6. The Need for Reform

153

Conclusion

157

Appendices

159

- A. About GAP
- B. Resources for Whistleblowers: Public Interest Organizations
- C. Resources for Whistleblowers: A Select Bibliography
- D. Resources for Whistleblowers: An Internet Index
- E. Responsible Whistleblowing: A Whistleblower Bill of Rights
- F. Text for a Model Citizen Enforcement Act
- G. Model Anti-Gag Statute and Addendum
- H. The Code of Ethics for Government Service

Introduction

Every year, thousands of Americans witness wrongdoing on the job. What they witness may jeopardize the health, safety or lives of others. They may see managers at a nuclear facility violate a safety code, a chemical company dump hazardous waste unlawfully, or a food processing plant attempt to sell contaminated and dangerous meat to consumers.

Most employees remain silent. They conclude that it is not their concern. Or that nothing they can do would stop the problem. Or that they can't afford to cause problems on the job. Others choose to bear witness and speak out. They seek to make a difference by "blowing the whistle" on unethical conduct in the workplace.

Under the Whistleblower Protection Act, whistleblowing is defined as disclosing information that an employee reasonably believes is evidence of illegality, gross waste, gross mismanagement, abuse of power, or substantial and specific danger to public health or safety.

Whistleblowers' actions may save lives or billions of dollars. But rather than receive praise for their integrity, they are often targeted for retaliatory investigations, harassment, intimidation, demotion, or dismissal and blacklisting. Pentagon whistleblower

Ernie Fitzgerald describes whistleblowing as "committing the truth," because employers often react as if speaking the truth about wrongdoing were committing a crime.

The Government Accountability Project (GAP) was created to help these employees, who, through their individual acts of conscience, serve the public interest. Since 1977, we have provided legal and advocacy assistance to thousands of employees who have blown the whistle on lawlessness and threats to public health, safety and the environment. This experience has given GAP attorneys and organizers valuable insights into the process and hazards of whistleblowing.

This handbook is designed to share these insights with others. We hope that a broad audience will find its contents useful—that it will help concerned citizens, policymakers, and public interest groups understand the difficulties and social importance of whistleblowing. There are lessons for all of us in the experiences of whistleblowers, about the powerful disincentives that have been built into our institutions of government and business against coming forward to speak the truth about wrongdoing. But above all, this handbook was written with one set of readers in mind—employees of conscience in government or the private sector who want to make a difference.

This handbook offers ideas on how best to blow the whistle and maximize the chances of success and survival, despite inadequate and often unjust laws and procedures. Ultimately, the system must be changed if whistleblowers are to be protected and honored for their indispensable role in preserving openness and accountability in government and industry. Until then, employees must understand the realities of the current system, so that they can make clear-eyed decisions about whether and how to turn information into power by blowing the whistle on misconduct in government or industry.

CHAPTER ONE

Deciding to Blow the Whistle

The decision to blow the whistle may be among the most significant choices you will make in defining your professional identity and career future. We want to help you make this decision—and to act on it—in the most informed way possible.

We will expose you to the many pitfalls of whistleblowing. We will explain your rights under the law, outlining both the protections provided for federal government workers under the Whistleblower Protection Act and other statutes, and the patchwork of legal protections that exist for private-sector employees. We will explore the challenges you will face in trying to secure these rights. We will also describe what we have learned about the patterns of bureaucratic response to employees who step forward to speak the truth about institutional misconduct.

If you decide to blow the whistle, even after learning about the risks, we want you to do it in a smart and strategic manner, one that will serve your own as well as the public's interests. You may want to remain anonymous or you may choose to go public. You may decide to take your story to the media, or prefer to talk to public officials with the power to correct the problem. Your decisions will affect your future, your family and your career. A

well-planned strategy offers you a chance of succeeding, but un-planned or self-indulgent dissent could be the path to professional suicide.

Through our work with whistleblowers over the years, GAP staff have learned much about what kinds of strategies and cases are most likely to be successful and which are a recipe for frustration or failure. GAP has three primary criteria for evaluating potential whistleblower cases; you may want to ask yourself these questions as you consider whether to blow the whistle.

- Is the wrongdoing at issue substantial enough to warrant the risks of reprisal and the investment of human and financial resources to expose it?
- Are your allegations reasonable and can they be proven?
- Can you make a difference in resolving the wrongdoing by taking these personal risks, or will you merely be beating your head against a bureaucratic wall?

Beyond these general criteria, your decision about whether to blow the whistle is an intensely personal one. It means making a choice between conflicting social values. Our society honors "team players" and doesn't like cynical troublemakers and naysayers. But we also admire rugged individualists and have contempt for bureaucratic "sheep." We look down on busybodies, squealers and tattletales. But we condemn just as strongly those who "don't want to get involved," claim to "see nothing" or look the other way. And while we believe in the right to privacy, we simultaneously fight for the public's right to know.

The decision also raises conflicting and deeply personal issues of loyalty and livelihood. Loyalty to family is as much an instinct as a duty: we don't bite the hand that feeds our family by turning on our employers. We may feel a similar loyalty to our colleagues at work. At the same time, few would disagree that we have a duty of loyalty to the public trust, the law and our communities as well—one that would lead us to speak out against wrongdoing. For government workers, these loyalties are embodied in the Code of Ethics (see Appendix H) and other laws

that include a "duty to disclose" violations. Too often, however, supervisors expect workers to honor this obligation only when it does not conflict with their primary loyalty to their agency. This leaves employees in a "lose-lose" situation—guilty by silence, or doomed to risking the reprisals that come with whistleblowing. Any decision about how to act on these conflicting values is not easy, and it is one that only you can make. But your decision should also be fully informed by an understanding of the likely consequences of your actions.

One thing is certain. With the truth on their side, individuals *can* make a difference. Whistleblowers are the Achilles heel of organizational misconduct, if they bear witness when it counts. Used strategically, truth is still the most powerful political weapon in our society, capable of defeating money and entrenched political machines. Armed with the truth, whistleblowing Davids repeatedly have exposed and defeated Goliaths who put goals of economic or political power above the public interest.

At their best, whistleblowers embody the professional integrity of true public servants: through their actions, they add the concept of citizenship to their identity as workers. Within large organizations, they are the human factor that counterbalances the tendency of bureaucracies to put organizational self-interest above all else, even when it means institutionalizing patterns of wrongdoing. And their actions change policies and institutions. Consider a handful of representative examples from GAP's experience. Whistleblowers have:

- forced the cancellation of a nuclear power plant that was 97 percent completed and was approved by the government for operation—despite the fact that its construction was compromised by shoddy materials, massive falsification of x-rays on safety welds and uninspected work on safety systems.
- provided the evidence that led to injunctions against two incinerators and cancellation of three others for dumping toxic substances such as dioxin, arsenic, chromium, mercury and other heavy metals into the environment in five states. Whistleblowers also helped persuade the Environmental

Protection Agency to declare a moratorium against new incinerators and to institute a new combustion policy establishing dioxin limits for all hazardous waste incinerators.

- exposed systematic illegality and forced a new clean-up after the Three Mile Island nuclear incident, by revealing utility company plans to remove the reactor vessel head using a crane whose brakes and electrical system were destroyed in the accident and had not been tested with weight. The vessel head consisted of 170 tons of radioactive rubble that, if dropped, could have triggered another accident. Whistleblowers went public with the evidence two days before the head lift was to take place and stopped it until the crane was repaired and tested.

- forced cancellation of proposals in the 1980s to replace federal meat inspection with industry "honor systems" for the USDA seal of approval—plans that could have led to even more food poisoning outbreaks from government-approved meat, similar to the 1993 Jack-in-the-Box tragedy.

- forced the shutdown of a nuclear weapons production plant that had released over two million pounds of radioactive dust into the environment around Cincinnati, Ohio.

- revealed that a Veterans Administration hospital police chief periodically beat patients, minorities and homeless people seeking shelter. The chief's tactics included smashing a victim's face into the wall and refusing to allow the blood to be cleaned up, and beating a patient who was on a kidney dialysis machine. The whistleblower lost his job, but he stopped the brutality and today is a respected member of the Cincinnati police force; the former VA police chief is now a convicted felon.

- exposed fraud and abuse in the Brilliant Pebbles project—planned as the next generation of the "Star Wars" missile defense system—and helped spark cuts of \$2.1 billion from the Star Wars budget before it was formally canceled in 1993.

- revealed that the Hanford nuclear weapons reservation in Washington state has emitted more radioactive waste than the government and its contractors have acknowledged, totalling at least 440 billion gallons spilled into the air, ground, Columbia River and water supply. A whistleblower proved that more than a million gallons have leaked from a tank that official records claim has lost only 5,000 gallons. Whistleblowers' dissent halted plans to dump 7.5 million gallons of liquid radioactive waste into the water supply; stopped the restart of a plutonium reprocessing plant scheduled to pump out some 50 million tons of carcinogenic carbon tetrachloride; and forced a commitment from that facility to cut radioactive emissions by 60 percent, literally saving citizens in the Pacific Northwest from having millions more gallons of liquid radioactive wastes dumped into the groundwater and river.

- challenged Standard Form 189, a blanket "gag order" that would have required nearly three million employees with security clearances to obtain advance permission from their superiors before discussing virtually any concerns with government officials, members of Congress or the public. After 1.7 million employees signed the form, one man, Ernie Fitzgerald, refused. Thanks to his courage and support from the chair of a congressional subcommittee, Congress outlawed provisions in that or any other federally-funded gag order that conflict with the First Amendment and the Whistleblower Protection Act.

Without question, the rewards and public benefits of whistleblowing can be substantial. But so too are the risks and costs. Time and again, GAP has seen whistleblowers pay an enormous professional and personal price for their actions—often a price they did not anticipate. We want you to be prepared. As a result, we do not mince words in describing the possible costs of your decision to blow the whistle.

You almost surely will suffer some level of retribution or harassment for living the values of a public servant. You may not

believe your employer is your adversary, but the record shows that employers often do not want to be told what is wrong with their operations. Frequently they greet the bad news by trying to silence the messenger—to avoid any bad publicity, cost overruns, liability, or simply to prolong the benefits of the misconduct. It is not uncommon for whistleblowers to be harassed, socially ostracized, or even fired from their jobs; some are professionally destroyed. Those who aren't fired may find themselves deprived of meaningful work.

You must also take a realistic and pragmatic view of the law, and the degree to which you will be legally protected from retaliation for speaking the truth. In theory, whistleblowers—at least

those in the federal government—have the benefit of a government agency (the Office of Special Counsel) that exists to protect their constitutional rights of freedom of speech and freedom to petition Congress. All too often, however, employees who choose to exercise these rights on the job find that their rights exist on paper only.

—Equal Employment Opportunity Commission whistleblower

Federal employees often are confined to defending their rights before administrative judges who lack the bureaucratic independence to rule against powerful interests without risking reprisal themselves. By effectively blocking access to our federal courts and to a jury trial before one's peers, these whistleblower laws provide only second-class rights, hardly the foundation for first-class public service. Perhaps most frustrating, the law provides little to deter those who retaliate. Federal officials are effectively shielded from personal liability, even for violating a government whistleblower's constitutional rights. Too often, managers who carry out reprisals subsequently receive promotions or bonuses rather than reprimands.

Besides the obvious risks of potential job loss and inadequate

protection by existing laws and agencies, there is also an emotional and mental price to pay for whistleblowing. People who have been lifetime friends may turn against you, and the people with whom you work may treat you as an outcast. Forest Service law enforcement agents who challenged timber theft and defended endangered species learned this the hard way, as local television news shows and newspapers denigrated them for their display. In a community that depends on an industry or government money for its livelihood, do not be surprised when people ostracize you and perhaps your family if they perceive your action as threatening their way of life—even if you believe your actions are in their interest.

As important as recognizing the extent of the likely consequences of blowing the whistle is understanding *how long* you may be paying the price for your actions. You should not become a whistleblower unless you are prepared to make the commitment of following through on your charges. You will learn that it is very difficult to stop mid-stream and have any hopes of surviving the ordeal mentally or professionally. Long after the public has forgotten your courageous actions, your superiors will remember what you did to them.

Even more important, the government agency or corporation that employs you has an institutional memory. Bureaucrats come and go, but the bureaucracy rarely forgets or forgives. On occasion, third or even fourth generations of managers continue the harassment campaign against a whistleblower—long after the original target of the dissent has left, and even after the whistleblower was vindicated.

There is another reason to weigh your decision to blow the whistle carefully: you owe it to the values or issues you are seeking to defend. If you quit while you are still needed, your point of view almost certainly will lose. In the aftermath your legacy will be to have undermined your goals. Wrongdoers will be stronger and corrupt institutions reinforced, because you stuck your neck out tentatively and quit.

As a general rule, it would be better to have looked the other

way than to have blown the whistle unsuccessfully. That is why GAP examines timing, the difference between knowledge and proof, and other factors affecting prospects for legal success when we select whistleblower clients. Frequently we turn down whistleblowers seeking our representation because we believe in them but recognize that they do not have a good chance of success—and we do not want to be responsible for helping dig them and their causes into a deeper hole.

DECIDING HOW LOUDLY TO BLOW THE WHISTLE

Part of deciding whether to blow the whistle is thinking through how you would do it. One of the first issues to consider is whether you want to "go public" with your concerns or remain an anonymous source. This decision depends on the quantity and quality of your evidence, your ability to camouflage your knowledge of key facts, the risks you are willing to take, and your willingness to endure intense public scrutiny.

Going public unquestionably boosts both the risks and rewards of whistleblowing. Before deciding to go public, it is worthwhile to examine your motivations carefully. Some potential whistleblowers expect recognition and glory to follow after they become public crusaders for truth, but most who have done it will advise that the pain overwhelms any ego boost. If your main motivation is revenge or public recognition, you are blowing the whistle for the wrong reason. No matter how truthful or significant your dissent, you assume a real risk of being discredited rather than vindicated. And any public recognition from vindication is likely to be fleeting at best.

It also is foolhardy to blow the whistle as a money-making venture. Publicity about multi-million dollar awards in damage suits and "bounty" statutes such as the False Claims Act may lead some employees to conclude that blowing the whistle may bring a cash award. Realistically, the odds of cashing in from a whistleblower suit are akin to winning the lottery. The odds of painful and protracted reprisal, on the other hand, are a good

bet. It would be wiser to invest in the lottery: you will not get fired for losing, or risk being blacklisted in your profession even if you win.

A public whistleblower should not expect justice. The only thing that you can count on is personal satisfaction that you did the right thing, and that you lived your values instead of stopping at lip service. If you approach your whistleblowing with the idea that this is all you will receive, any other benefits will be a bonus.

The alternative to going public—blowing the whistle anonymously—has its own strengths and limitations. The positive side of being an anonymous whistleblower is that you may protect your career. However, you often are limited in what you can expose, because you must ensure that the documentation you leak is self-explanatory and can stand on its own merits without your public explanation. Many, if not most, investigative bodies do not consider anonymous allegations to be credible. You may choose to provide another source—a reporter or your representatives at a non-profit organization—with a fuller explanation of your documentation, and trust your source to convey it without revealing your identity.

You must also be careful that your allegations cannot be traced back to you. Sometimes the substance of the charges can be your "signature," because your job position makes you the only person who could be aware of the problem you have exposed, or the only one with access to the relevant records. While there are ways to avoid having documents traced back, it is virtually impossible to *guarantee* that the information will not lead back to you.

Anonymity offers another potential advantage: it can allow you to maintain your insider's position, and to witness how the bureaucracy attempts a cover-up once the problem has been exposed. GAP has seen whistleblowers on the inside who leaked information and then were actually on the "damage control" team assigned to cover up the fraud. Once public whistleblowers are exposed, they usually are isolated from the bureaucracy and the evidence. After the flow of information dries up, it is hard to rebut the system's evasions, denials or disingenuous "reforms."

To be a successful anonymous whistleblower, you must have an effective outlet and strategy for leaking the documentation. Chapter three of this handbook covers potential whistleblower outlets and the best way to approach them.

Keep in mind that it takes a certain personality to leak information anonymously while remaining cool enough not to draw suspicion. If you don't have a good "poker face," and you cannot think of a safe strategy for leaking information without having it traced to you, consider going public or not blowing the whistle at all.

Whichever path you choose, be decisive. The worst approach you can take is to remain semi-anonymous. If you are suspected of the leak but are not publicly known, you will experience the worst of both worlds: the agency or company will begin to retaliate while denying any knowledge that you are a whistleblower, which can deprive you of your legal rights against reprisal. Perhaps worst, you will not have the benefit of outside resources to blunt the attack.

The following checklist may help you determine if you are ready to blow the whistle either anonymously or publicly:

If you plan to remain anonymous, ask yourself:

- Am I in a position to know that what I see as misconduct really is improper in the bigger picture, or could "tunnel vision" be leading me to a wrong conclusion?
- Will it work—or will anonymous disclosures simply give the wrongdoers an opportunity to cover up the problem?
- Can I prove my allegations with self-explanatory documents that do not need my public explanation?
- Can these documents be traced to me because a small group of people received them or my copies are uniquely marked? (Beware of tracebacks through fax identifications.)
- Can I act nonchalant when these documents are disclosed so as not to attract suspicion?
- If discovered, do my spouse and I have the ability to

support my family without my job or even outside my current profession?

■ Is my family prepared for and does it accept the possibility of stress from uncertainty, and the possibility of a negative public profile if I am discovered?

■ If discovered, what liability will I incur, if any?

If you plan to go public, ask yourself:

■ Does my job allow enough perspective to ensure that my conclusions are not the mistaken product of "tunnel vision," even if my information is accurate?

■ Are my family and I financially and mentally ready for a protracted fight with my employers to prove my allegations and to try to retain my job?

■ Am I mentally ready to have my fellow workers and perhaps my friends turn against me because of my disclosures?

■ Am I ready for personal attacks against my character and to have any past indiscretions made public?

■ Do I have enough evidence to prove my charges without having to go back to my workplace? Even if I can prove my initial allegations, would I be more valuable through sustaining my access to information by not going public?

■ Am I sure that my motivations are to expose the wrongdoing on behalf of the public interest, and not just sour grapes, revenge, or a quest for financial gain or public attention?

■ Am I financially and mentally ready to risk my career?

BLOWING THE WHISTLE WISELY

If challenging the powers that be is as old as organized society, so is retaliation for doing so. The first reaction of large organizations to perceived internal threats is often an almost instinctive counterattack. Because your employer might well strike back after you blow the whistle, a carefully planned and executed strategy is crucial. To maximize your own protection after blowing the whistle, we recommend twelve basic survival strategies:

1. *Before taking any irreversible steps, talk to your family or close friends about your decision to blow the whistle.* One of the most serious risks of whistleblowing is family break-up, because the entire family will suffer the resulting hardships. If you choose to challenge the system without your family's knowledge or approval, you may lose them in the aftermath—a sacrifice greater than the professional consequences.

2. *Develop a plan so that your employer is reacting to you, instead of vice-versa.* To ensure your best chance of survival, you will need to go on the offensive, rather than simply reacting to the bureaucracy's or company's actions. As in other situations, the best defense is a good offense: your employers should be responding defensively to your strategically-timed releases of information, meetings with the press and public officials, and other elements of your whistleblowing plan. Once you have stopped setting the agenda, and are reduced to responding to their attacks on you and the credibility of your disclosures, your chances of losing escalate.

3. *Be alert and discretely attempt to learn of any other people who are upset about the wrongdoing.* Through strategic but casual questioning and discussions with co-workers, you can learn whether your objections to the wrongdoing are credible among colleagues and whether you see enough of the whole picture to be certain that your suspicions are well founded. Your colleagues may be important witnesses in the future, and may have additional information about the problem, or confirm that it

is more widespread than you know. It is possible that some co-workers may be as concerned as you are about the problem, and may be willing to join you in making a disclosure. Solidarity can make all the difference in preventing retaliation. Remember, you should be careful not to expose yourself in the process as a troublemaker or a threat to the organization's policies.

4. *Before formally breaking ranks, consider whether there is any reasonable way to work within the system by going to the first level of authority.* Challenges to institutional operations are often not taken seriously unless you can prove that you gave the proper authorities a chance to "do the right thing," and that their response to your warning was indifference or an attempt to cover up the problem. It is crucial, however, that your attempt to work within the system does not sound the alarm, triggering a cover-up or reprisal. It is very hard to do this successfully and safely, especially if you are challenging significant wrongdoing. Perhaps most important, working within the system can expose you to retaliation without the benefit of support from a public constituency—the most isolated, and therefore vulnerable, position for a whistleblower.

The best initial approach to challenging potential misconduct may be to raise an issue casually, in an informal setting or meeting: you want to appear to be thinking aloud in a nonconfrontational way, or asking for help in answering difficult questions. If that doesn't work and you're not at peace with letting the matter drop, you may have to make your point more directly, in as low-key and nonadversarial a manner as possible. This may be best done in writing. You must state clearly what is wrong and what your position is on the matter, without being pushy or demanding. You will be risking exposure—but it may be important for your credibility later. If there is no record of your prior objection to the wrongdoing, your superiors may respond by making you the scapegoat for the very misconduct that you have attempted to expose. This would divert your energies to proving that you were not responsible for the wrongdoing.

In many situations, however, it is unwise or impossible for

you to complain internally, especially when you seek to expose serious misconduct. It is hard to decide how far to protest within the system—even if you plan to remain anonymous. The decision whether to inform anyone internally must be made carefully, on a case-by-case basis. If you make a record of protest in the system and then the problem is exposed publicly, you may draw suspicion to yourself. However, if you do decide to go public or are informally discovered, qualifying for coverage under the free speech laws depends on being able to prove that your boss knew you were a whistleblower. Your legal defense may depend on some institutional record of your dissent.

Another strategy is to maintain the identity not of a public whistleblower, but of a cooperative witness who simply tells the truth under oath when the authorities demand answers. It is more difficult for an employer to retaliate against a subpoenaed witness who reluctantly agrees to speak truthfully about a problem when questioned by authorities. Of course, you may have to take steps to convince authorities to seek disclosures from you—and this could prove difficult. Because this is a "Catch-22" situation, you may want to seek professional advice from the Government Accountability Project, the Project on Government Oversight, Public Employees for Environmental Responsibility or other experts.

5. Maintain good relations with administrative and support staff. Managers who respond to dissent with harassment and repression may use the same approach routinely with secretaries, clerks and other assistants. These people can be a great help to you in the future. They may provide you with discrete warnings or, later on, offer testimony as to management motives.

6. Before and after you blow the whistle, it is very important to protect yourself by keeping a careful record of events as they unfold. Not keeping close, contemporaneous records of harassment and other activities is one of the biggest mistakes that whistleblowers make. There are several good ways to do this and the time you take now could be very valuable in any future investigation or court proceeding.

Keep a diary—a factual log of your work activities and events at your workplace. Try to keep this diary as straightforward as possible, leaving out any speculations, personal opinions, or animosity you may have toward your fellow workers or your situation. The diary does not have to be kept on a daily basis, but it is important to write down events that relate to the wrongdoing you are planning to report or any harassment you are receiving, in part to record your objection to it. Record events that happen, and the full names and titles of all people involved. Make sure that you date and initial each entry.

This may seem like a burden, but it is an invaluable investment in your professional survival. As legal evidence, the extra credibility from your written impressions at the time of disputed events may make the difference between winning and losing a future lawsuit. It is also an insurance policy against memory losses, and helps to piece together significant facts and patterns. Be aware, of course, that your employer will have access to the diary if there is a lawsuit.

Write memoranda for the record of important events or conversations about which you want to make a permanent record. Place the date and title, "Memorandum for the Record" or "Memo to File" at the top, and then write down everything you can remember from the conversation or event. Then sign the memorandum, date it, and if possible have someone witness it. If you need to write a memorandum for the record about a conversation or event in which it will be your word against someone else's, the safest way to proceed is to write the memorandum, make a copy, seal it well in an envelope and mail it to yourself. Once it is sent through the mail it will be postmarked, and you should store it in your records without opening it. Then when you need to prove your claim, the sealed envelope will show that you wrote the memorandum on the postmarked date.

Electronic-mail systems in large organizations can be used to memorialize or confirm important conversations and, in some cases, force managers to put their thoughts on the electronic record. Most systems allow all messages, even "eyes only" messages, to be printed. *A note of caution:* do not put anything on

this system that you want to keep private, and do not allow your only copy of a document to remain on the system. Be sure that confidential material is kept elsewhere and that you have hard copies of important documents in a secure location.

7. *Identify and copy all necessary supporting records before drawing any suspicion to your concerns.* Access to information could be cut off once the exposure of bureaucratic misconduct is identified as a threat to the organization. Even if you plan to remain anonymous, it is important to have a copy of all relevant documents because once the problem is exposed, documents may be destroyed or hidden. Either way, it is very hard to blow the whistle successfully without credible documentation to back up your claims.

Documentation generated by the organization itself is the best evidence. Many managers, when forced to do something that could later blow up in their faces, will keep a "Pearl Harbor file" to demonstrate that they were only following orders. Those files can be very valuable in trying to prove fraud or abuse of authority. If you cannot copy all the documents, make copies of the best supporting ones and then make a list of the rest, so that you can tell an investigator or a court exactly which records to pursue. Be warned, however, that some employers will accuse you of "stealing" their "property" when you make copies of the evidence incriminating them. Inspectors General have opened criminal investigations on such grounds. For example, the U.S. Department of Agriculture (USDA) has investigated federal whistleblowers for alleged theft after they exposed contamination of USDA-approved beef and poultry on national television.

This issue highlights the unavoidable choices you face when deciding whether to blow the whistle. If you do not have enough documentation or witness testimony, you may be risking retaliation for nothing. Under those circumstances, you probably do not have a realistic chance of making a difference. On the other hand, there are severe, inherent risks in seeking to obtain the evidence necessary to be taken seriously. In other words, if you're going to do it, do it right—but be aware of what you're risking.

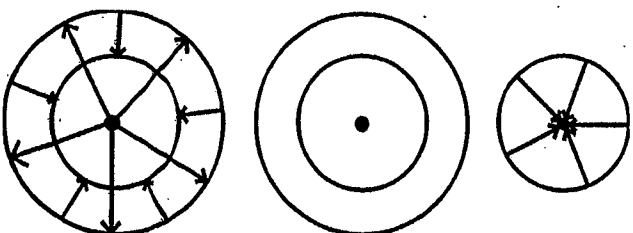
8. *Research and identify potential allies such as elected officials, journalists or activists who have proven their sincerity and can help expose the wrongdoing.* It is important not to contact the media, Congress or any other outlet until after you have definitely decided whether to blow the whistle and whether you plan to be anonymous or go public. Then, particularly if you decide to go public, it is essential to develop a support constituency whose interests in your act of public service coincide with your career survival. This is a cornerstone of your strategic plan. Whistleblowers are most often successful when they communicate their message to those citizens who will benefit from their disclosures; when whistleblowers remain isolated, they are more likely to lose. Developing a support constituency not only breaks the isolation you may face, but also exerts critical pressure on your employer. When the wrongdoing is exposed, your employer should be reacting to the media, Congress, the

Breaking the isolation: an illustration

Typically, a whistleblower is encircled and isolated by traditional bureaucratic institutional employers—corporations, legislatures, executive agencies—and the disclosed information is filtered or suppressed.

Beyond the bureaucracy are the sources of potential power outside of the institutionalized powerholders. These include the media, public interest groups, and consumers—the commonweal.

The challenge is to inform and educate the outer circle constituencies so that they exert power on the defined traditional powerholders—to build information spokes so that the commonweal surrounds and holds accountable the bureaucracy.



courts, and the public. Ensuring that your support constituency is informed and working with you will help you remain on the offensive. Do not underestimate your allies' advice and support. The illustration provided here depicts this strategic component of successful whistleblowing.

9. *Either invest the funds for a legal opinion from a competent lawyer, or talk to a non-profit watchdog organization about the risks and obstacles facing you.* There are a range of considerations you may want to weigh with a legal expert. These include the potential retaliation you could suffer, the odds for a successful defense, how much it could cost to defend your rights, whether there are legal restrictions on any of the evidence you may be considering for disclosure, and the prospects for making a difference given the risks. Organizations such as the Government Accountability Project, the Project on Government Oversight and Public Employees for Environmental Responsibility can directly—or via a referral—offer you advice, help you plan legal, media and political strategies, and advise you about legal counsel. If you consult with a private attorney, keep in mind that the ultimate decision about whether and how to blow the whistle is yours to make, not the lawyer's: you are the one who must live with the moral, ethical and professional consequences of your decisions.

10. *Always be on guard not to embellish your charges.* This is essential to maintaining your credibility. It is far better to understate than to overstate your case, because your employers can leap at every slight exaggeration and use it to discredit you. GAP usually advises whistleblowers to stick to direct personal knowledge in telling their stories, and then give congressional or media investigators ways to uncover the rest of the facts—and any broader implications of wrongdoing—for themselves. The less you skate on thin ice with your information, the more credible you will be to people who have to trust you before they will help you.

11. *Engage in whistleblowing initiatives on your own time and with your own resources, not your employer's.* Government employees have been fired for conducting "personal business" (in one case, blowing the whistle on fraud) on government time, using "public property" (the office copier machine, fax or telephone). It is a good general rule not to engage in whistleblowing activities during office hours or using office equipment. There are exceptions, of course, such as in the case of a government auditor or investigator on assignment who inadvertently blows the whistle on government time, simply by conducting his or her audit or investigation. On other occasions, employees have obtained specific permission to use government time when cooperating as a witness in an investigation sparked by their or others' whistleblowing disclosures. Additionally, some collective bargaining agreements allow employees to use office supplies during normal hours to work on legal disputes with an employer.

12. *Don't wear your cynicism on your sleeve when working with the authorities.* With good reason, you may have a knee-jerk reaction that any authorities assigned to investigate your charges must be incompetent, corrupt, or attempting to cover up the wrongdoing.

Even if you feel this way, it may be a fatal mistake to display your suspicions. If the investigator or auditor were not defensive to start with, your attitude may poison the well and intensify the abuse against you. For better or worse, once you become a whistleblower you are in a partnership with whomever is on the front lines of enforcing the rules. You will get along better, enjoy the process more, and maintain the chance for an effective working relationship if you treat your partner civilly.

Further, the investigator deserves the presumption of innocence until proven guilty or complicit. It would of course be foolhardy to extend blind trust and "spill your guts" to someone who may be an agent for wrongdoers. But at least give your temporary partner a chance to prove him or herself: see if and how s/he acts on your evidence.

Keep in mind that many of our most courageous whistleblowers have been civilian or military law enforcement agents who sincerely were trying to do their jobs, acting on the concerns of pioneer dissenters who raised the issues. If you are wrong in assuming bad faith, you may lose one of your potentially most important allies.

The foundation for all these survival strategies is a healthy attitude. To transcend the stress, it helps to be fully aware of and accept what you are getting into. This is a time to draw on and learn the extent of your inner strength. You will need it. The constant, negative pressure whistleblowers face can color your judgement and make you paranoid about every event. Paranoia works in the bureaucracy's favor if it wants to paint you as an unreasonable, even unstable person whose charges should not be taken seriously. To succeed, you must be able to rise above this trap. The following suggestions may help.

Appreciate your sense of values and keep your sense of humor. It is better to stay calm—and even to laugh—than it is to seethe with anger when bureaucrats make a mockery of fairness or inflame their self-importance. It can be liberating to know that you have assumed responsibility for making your own decisions based on your values, rather than accepting the agency's or company's line unquestioningly. Along with the pain and fear, there is real satisfaction inherent in taking control of your life. Take time to reflect on and enjoy the self-respect that comes from knowing that you are living your values.

Watch your expectations of others. You can reduce your own isolation by not being judgmental, or expecting everyone else who is moral to blow the whistle. Even if you are doing the right thing and your concerns are accurate, it is enough to risk your own neck. Don't expect others to do the same. Your colleagues sincerely may hold differing opinions or may not be positioned to risk their source of economic support for their families. They will resent you if you morally condemn them for failing to make the same difficult choice as you have—and this resentment will add to your isolation.

Keep perspective. Do not surrender to the temptation to become an obsessive "true believer" in the importance of your whistleblowing cause. A measure of detachment is essential, for your well-being as well as your effectiveness. It helps to have another job or a hobby that takes a good portion of your time, so that your whistleblowing activity does not completely dominate your life. Doing this will help you remember that there is more to life than whistleblowing. Letting it consume you most likely will destroy you, and your credibility, over time. Similarly, while career reprisals may reduce your ability to support your family financially, only you can determine whether your whistleblowing will reduce—or enhance—your ability to provide your family with emotional support and guidance. You may have a lot more time and energy to give them. Through all these approaches, you can help turn the crisis of retaliation into a unique opportunity for other kinds of personal growth.

Anticipate retaliation and surveillance. No matter how healthy your attitude, constructive your approach or complete your ultimate vindication, facing some form of harassment is the rule rather than the exception for whistleblowers. Academic research confirms the pattern: in a 1987 study by Doctors Karen and Donald Soeken, 232 out of 233 whistleblowers reported suffering retaliation; similarly, 95 percent of whistleblowers in a 1989 study by Professors Philip Jos, Mark Tompkins and Steven Hays said they faced reprisals. Nor are these results unique to the United States: a study of whistleblowers in Australia by Dr. William De Maria found that 94 percent reported direct or indirect reprisals. So expect and be prepared for the worst.

"I have values that just won't let me participate in illegal things. There is nothing extraordinary about me at all. I'm no hero. But you've got to live with yourself. If I didn't do it, how could I live with that face in the mirror every morning?"

—General Services Administration whistleblower

In addition to confronting retaliation on the job, some whistleblowers find themselves the objects of surveillance by government, industry or private investigators. This experience can be very frightening and can exacerbate your understandable anxieties. While it is important to document any suspected surveillance through a diary or memorandum for the record, it is just as important not to let suspicious activity get to you. We often advise that if someone is watching you, s/he wants you to become affected by the surveillance and to act irrationally. It can be another way of bullying you into a mistake. It is to the benefit of your detractors for you to sound crazy to the general public by saying that your phone is tapped without having proof.

It is very hard to prove that you are being watched or that your phone is being tapped, so the best way to deal with this concern is to be careful about information you provide over the phone—without allowing yourself to be functionally gagged from communicating. Indeed, telephone communications can even be a way of conveying disinformation to listeners, or to issue subtle warnings that you wish to communicate. Similarly, be sure that nothing you do not want to reach your employer is exposed through office recycling or garbage, stored in an unsecured manner on your computer or sent to you at the office. Employers have been known to go through whistleblowers' desks, confiscate computer files, and even intercept and open mail they receive at the office. If you operate from the premise that you may be watched and are appropriately careful, the surveillance efforts will be in vain. And as explained above, if you are cool enough to be strategic, the surveillance may backfire.

Be prepared for public scrutiny. You should expect your employer to work very hard to find some flaw in your past or in your character and to attempt to exploit it. Even if this strategy fails as a diversionary tactic with others, it can create extraordinary stress for you. Everybody has skeletons in their closets. Like candidates in an election campaign or nominees for political appointments, whistleblowers have to develop thick skins. To paraphrase the famous reporter Clark Mollenhoff, you must be pre-

pared to live with the whole record.

Although this list of survival strategies may seem overwhelming, it is only an introduction to the most important course you may take in your professional life. And careful, strategic planning may be the most important investment you make in your professional survival. You may appreciate the value of these burdensome suggestions more after learning the techniques used in organizational reprisals against whistleblowers. Taking on the system can be the wisest or worst decision of your life. If you intend to win, you may as well prepare and be smart about how you do it.

CHAPTER TWO

What to Expect: Classic Responses to Whistleblowing

If you are going to challenge the agency or corporation that employs you, you need to understand how large organizations operate. In particular, you should know how bureaucracies function to target troublemakers and to neutralize dissent.

TARGETING DISSENTERS: THE TACTICS OF RETALIATION

Intimidation and fear are the ultimate objectives of classic organizational reprisal techniques. The goal is to convince employees that the power of the organization is stronger than the power of individuals—even individuals who have truth on their side. The following is a list of tactics your employer may use in the effort to silence you, fire you or harass you into resigning. They are illustrative examples of how bureaucracies attempt to keep the majority silent by making examples out of troublemakers such as whistleblowers. Keep in mind that the list is not exhaustive; the forms of organizational harassment are limited only by the imagination, and may be "custom-fit" to strike at a whistleblower's unique vulnerabilities.

Spotlight the Whistleblowers, Not the Wrongdoing

The first commandment of retaliation is to make the whistleblower, instead of his or her message, the issue: obfuscate the dissent by attacking the source's motives, credibility, professional competence, or virtually anything else that will work to cloud the issue. The point of this tactic is to direct the spotlight at the whistleblower, instead of the alleged misconduct.

A common initial management response to a whistleblower's disclosures is to launch a witchhunt by placing the employee under investigation, and to keep digging for "dirt" to devise a smear campaign against him or her. When Three Mile Island engineer Richard Parks challenged sloppy clean-up practices that could have triggered another nuclear accident, for example, his employer's first reaction was to brush aside the safety issues and place Parks under investigation for an alleged financial conflict of interest. The search for incriminating evidence against a whistleblower can include extreme measures: Parks returned home one day to find that his house had been broken into and ransacked. Parks was not vindicated until he went public and sought help from the Department of Labor, Congress, and the Nuclear Regulatory Commission (NRC). All three supported him, and the NRC ordered clean-up procedures to be rewritten and extensive tests to be conducted.

Often, a government agency's Office of Inspector General or a private security firm will do the dirty work of investigating a whistleblower. Sometimes investigations and surveillance are conducted by "babysitters," spies assigned by management to "assist" the whistleblower. A top law enforcement manager at the U.S. Forest Service made enemies by briefing Congress on a practice the agency did not want exposed: its contractors were hiring and mistreating illegal aliens, and engaging in related mismanagement and questionable environmental practices. The Forest Service responded by opening a retaliatory investigation of the whistleblower. The investigators were assisted by the manager's subordinates, at the behest of agency superiors. The ensuing probe disregarded due process and did not attempt to resolve the fac-

tual disputes that were the point of the manager's original allegations.

A related technique is to open an investigation—and then deliberately keep it pending for an indefinite period. The idea is to leave the whistleblower "twisting in the wind," with the cloud of an unresolved investigation hanging over his or her head. The effect is not only to create uncertainty and stress for the whistleblower, but also to undermine his or her credibility: potential media, government and other officials may be discouraged from listening to and taking seriously a whistleblower's allegations when they learn that s/he is "under investigation." For five years, the Forest Service threatened to pursue disciplinary action for activities normally considered technicalities against two agents challenging age and sex discrimination in the agency. When the agents agreed to testify in Congress or appear on national television, the agency stepped in to "warn" the congressional and media contacts that the whistleblowers were under investigation and could be fired for serious misconduct.

Investigations have continued over decades, covering hundreds of witnesses. U.S. Department of Agriculture (USDA) meat grader John Coplin was under investigation almost continuously from 1957, when he first blew the whistle on bribery, until his 1981 retirement. William Lehman, a USDA import border inspector who stopped millions of pounds of contaminated meat from entering the United States and endangering consumers, was under investigation repeatedly for a decade.

Employers can be creative in devising grounds for an investigation or a smear campaign against a whistleblower. Any allegation will do, no matter how petty. Retaliatory travel, reimbursement and time audits are so common they could be classified as bureaucratic kneejerk reactions against whistleblowers. Even charges previously investigated and discredited will suffice. For example, in 1992 a blue-ribbon panel of independent experts discredited the Army's attempt to fire Star Wars scientist Aldric Saucier as incompetent for exposing mismanagement and abuse in America's anti-ballistic missile defense system. Instead the

agency reintroduced as new charges the same allegations about 1969 misconduct that had been investigated and not acted upon a decade earlier, in 1982.

Some employers will display realchutzpah in selecting charges, attempting to select and make stick the most outrageous or far-fetched charges possible—as a “lesson” to other employees about management’s power to control events. For example, a whistleblower who is renowned for being a gentleman may face sexual harassment charges; a soft-spoken, self-effacing individual may be branded a loud-mouth egomaniac. In one case, a law enforcement officer renowned for his respect for civil liberties was suspended without being allowed to confront the source of anonymous charges that he made an illegal search during a drug raid. In another absurd instance, a doctor challenging misconduct in a \$5 million federally-financed study was accused of anti-Semitism—despite the fact that her step-daughter was attending rabbinical school at the time. In some cases, employers select petty or ridiculous charges in an effort to hang the whistleblower on the very issue on which s/he dissented: a whistleblower exposing gross waste and fiscal mismanagement, for example, will be charged with theft of supplies or misuse of time cards.

Smear campaigns are often more vicious for whistleblowers higher up in the chain of command, because they are perceived as greater threats. They are more likely to “know too much,” and their organizational stature gives them more credibility. Randy Taylor, Chief of Military Police at the Bermuda Naval Air Station, exposed the cover-up of post-Tailhook sexual attacks and misuse of the base as a taxpayer-financed resort (known as “Club Fed”) for powerful politicians and military officials. The Navy responded by ordering him to undergo a psychiatric examination, which he passed.

Taylor’s experience was not unusual. Psychiatric fitness-for-duty examinations are one of the ugliest forms of retaliation, and have long been used as a way to spotlight the whistleblower. When Department of Energy scientist Marlene Flor challenged improper transportation of toxic materials and sexual discrimination, she

was ordered to take a psychiatric examination in which she was grilled about her dissent. When she passed, she was ordered to take a second exam. Nonetheless, her security clearance was revoked and only restored after years of bureaucratic and legal battles. Others face more severe psychiatric retaliation. Within days of protesting payments to reserve troops for *not* reporting to weekend training assignments, Air Force Sergeant Joseph Taliaferro found himself confined to a mental ward, wearing slippers with Happy Faces on them.

Build a Damaging Record Against Them

This tactic goes hand-in-glove with spotlighting the whistleblower. Not infrequently, government agencies or private companies spend years manufacturing a record to brand a whistleblower as a chronic problem employee who has refused to improve. The idea is to convey that nothing the employee does is right. Ironically, many whistleblowers have a history of sterling performance evaluations—until this tactic is used against them.

An employer may begin by compiling memoranda about any incident, real or contrived, that conveys inadequate or problematic performance on the job. This is often followed by a series of confrontational “counseling” sessions, in which the employee is baited to lash back. Reprimands and comparatively mild disciplinary actions are taken first, in part because the employee has few if any due process rights in defense. By the time termination is proposed, the deck may be well-stacked through a contrived history that the agency has written about the whistleblower.

Threaten Them

This tactic is commonly reflected in statements such as, “You’ll never work again in this town/industry/agency...” Warning-shot reprisals for whistleblowing, such as reprimands, often contain an explicit threat of termination or other severe punishment if the offense is repeated. In some cases, employees may have signed nondisclosure agreements as a condition of employment: the penalties in such nondisclosure agreements—which typically fail to

outline law enforcement/good government free speech exceptions—sometimes contain the threat of criminal sanctions for disclosures.

The art of making threats has been perfected in the world of federally-funded medical research. Dr. Suzanne Hadley, chief investigator for the Department of Health and Human Services Office of Scientific Integrity, began working with congressional investigators on cases of alleged high-level misconduct that undermined the integrity of studies funded by the National Institutes of Health (NIH). She promptly found herself facing an FBI agent who combined threats with interrogation.

NIH was a little more subtle with scientists Walter Stewart and Ned Feder. With NIH's approval they testified in their official capacity before a Health and Human Services advisory committee, the Commission on Research Integrity. Later, in response to a request by the Commission, Stewart and Feder used government time and stationery to send a draft congressional report on misconduct in AIDS research to the Commission. NIH reprimanded them for their communication and warned of worse punishment if they did it again. The reprimand was withdrawn after reports ridiculing NIH's action appeared in the press and after the Commission protested.

Isolate Them

Another retaliation technique is to transfer the whistleblower to a "bureaucratic Siberia." Two purposes are served: the isolation makes an example of the whistleblower, while also blocking the employee's access to information. After Food and Drug Administration scientist Dr. Joseph Settepani protested introduction of well-known carcinogens and mutagens into the food supply, he was reassigned to long-term research in a trailer on an experimental farm.

Federal Aviation Administration (FAA) engineer James Pope served as the agency's ombudsman for the general aviation constituency, until he exposed FAA suppression of an industry-developed back-up device to warn pilots of impending mid-air collisions. After Pope blew the whistle, his superiors reassigned him

to Seattle, Washington, where his duties vanished, except for tasks such as speaking to local Boy Scout troops. Joseph Whitson was in charge of drug testing for an Air Force base, where his sworn testimony exposing political manipulation of test results led to court martial acquittals. As he left the hearing, Whitson was reassigned to a desk in the basement of the base. He kept himself busy by occasionally sweeping the floor.

Employers may also isolate whistleblowers by assigning them to work at home, often without any duties, to facilitate later termination. NIH used an extreme version of this technique—assigning neither duties nor any work station at all—for over a year with Dr. Hadley, until she filed a legal complaint to force the agency to approve work for her. A more blatant approach is to assign whistleblowers to administrative leave with pay. Gordon Hamel, a whistleblower at the President's Commission on Executive Exchange, and Susan Swift, a Justice Department whistleblower, each endured this fate for extended periods before being restored to gainful positions.

Publicly Humiliate Them

This tactic is the bureaucratic equivalent of placing whistleblowers in the public stocks. When Resolution Trust Corporation enforcement attorneys Bruce Pederson and Jackie Taylor protested political sabotage of savings and loan prosecutions, they were publicly denigrated and assigned to work in buildings not staffed by any other RTC employees.

The strategy of combining public humiliation with isolation is not unusual. Mary Eastwood, Acting Special Counsel under the Carter Administration, protested in 1981 when her successor Alex Kozinski began colluding with agency managers to purge whistleblowers and Democrats from the agency. He moved her to a desk in the corner of a public room, and ordered other employees not to talk with her.

Set Them Up for Failure

Perhaps as common as the retaliatory tactic of isolating or humiliating whistleblowers by stripping them of their duties is

its converse—placing them on a “pedestal of cards” by overloading them with unmanageable work. This tactic often involves assigning a whistleblower responsibilities and then making it impossible for him or her to fulfill those tasks.

One approach is to withdraw the research privileges, data access, or subordinate staff necessary for a whistleblower to perform his or her job. When Dr. Anthony Morris challenged the swine flu vaccine and other dangerous drugs, his Federal Drug Administration superior transferred his animal handler, who was an essential partner for Dr. Morris to conduct his work in the laboratory. Employers may also set whistleblowers up for failure—and dismissal—by overwhelming them with new assignments. After vindication for challenging patient neglect, a Department of Veterans Affairs whistleblower was ordered to work double shifts without sleep and to perform medical procedures for which he protested he was unqualified. Subsequently he was fired for not properly treating patients.

“They will sacrifice the individual before saying that the agency made a mistake. The image of the organization is so important that they’ll destroy your life and career first.”

—Veterans Administration whistleblower

Another variation of this tactic is to appoint the whistleblower to solve the problem s/he has exposed, and then make the job impossible through a wide range of obstacles that undercut any possibility of real reform. The employee may then be fired for incompetence when the problem is not solved. Engineer Bert Berrube was a victim of this tactic at the General Services Administration, where Administrator Gerald Carmen assigned Berrube to correct serious building code violations, including numerous fire and occupational safety hazards Berrube had identified at several federal facilities. Unfortunately, Berrube was first denied the staff, authority and even access to information necessary for his mission. Then he was fired for his failure. It took nearly five years for his dismissal to be reversed in court.

Prosecute Them

The longstanding threat to attack whistleblowers for “stealing” the evidence used to expose wrongdoing is becoming more serious, particularly for private property that is evidence of illegality. In August 1989, moreover, the Justice Department announced that it had abandoned a decade-long policy of not prosecuting whistleblowers for unauthorized disclosures. Until this is reversed, an Attorney General may seek to send whistleblowers to jail if s/he sees fit. This policy of prosecution also extends to civil statutes: employers may allege, for example, that a whistleblower has violated the Privacy Act rights of culprits identified in an “unauthorized” whistleblowing disclosure.

The Justice Department has played the prosecution card against whistleblowers from its own ranks. Attorney Susan Swift worked in the Attorney General’s Office of Legal Counsel. During the Bush-Clinton presidential transition, she challenged the destruction of documents involving Supreme Court nominations, last-ditch attempts to cancel affirmative action programs before the new administration took office, and numerous civil service merit system violations. She was placed on administrative leave with pay and left twisting in the wind. After a year, she left a telephone message for a supervisor, saying that he was not going to get away with the harassment. In response, he had her arrested by the FBI for “assault on a federal official.” Thousands of dollars in attorney fees later, the charges were withdrawn.

Steve Cockerham, a meat inspector for the U.S. Department of Agriculture, was subjected to a retaliatory criminal investigation for allegedly “stealing” contaminated meat that was used on national television to illustrate the inadequacies of the government’s Streamlined Inspection System—a deregulatory meat inspection plan that was eventually defeated. Were it not for the diligent defense efforts of consumer and labor groups, the agency may have succeeded in prosecuting Cockerham.

Perhaps the crudest form of prosecution is to equate whistleblowing with treason. In separate cases, Dr. Howard Wilshire from the U.S. Geological Survey and Jeff van Ee from

the Environmental Protection Agency were each threatened with criminal prosecution under a McCarthy-era statute as government employees "disloyal" to the United States. Their crimes? Making disclosures to or participating in meetings with environmental groups that successfully challenged illegal government activity through lawsuits.

Some state legislatures are trying to take whistleblowers' liability to disturbing new limits. A new trend is to propose "privilege laws" that would make whistleblowers liable for the financial bills companies incur after being forced to act on whistleblowers' disclosures. One proposal even would make state government employees criminally liable for warning citizens with information from environmental audits.

Physically Attack Them

Whistleblower Karen Silkwood from Oklahoma's Kerr McGee nuclear facility was killed after her car was forced off the road on the way to meet a reporter—leading investigators to suspect murder. Her fate demonstrated the risk of physical retaliation for whistleblowing.

Physical attacks on whistleblowers are not common, but are worrisome. Sometimes organizations encourage, or wink at, "the boys" who do their dirty work. Hanford Nuclear Reservation employee Ed Brickler suffered a physical attack after he protested leaks of radioactive waste. The offender was not punished. The treatment of USDA meat inspector Vernie Gee was even more disturbing. After confrontations with plant management about contaminated beef in southern California, he was jumped from behind by an employee who fled and became a fugitive. While Gee was still recovering in the hospital, USDA issued a reprimand to him for fighting.

In other cases, physical retaliation against whistleblowers is more subtle. Whistleblowers at nuclear weapons facilities and laboratories may find themselves assigned to work in the hottest radioactive spots in the plant. After challenging the Interior Department's refusal to collect strip mining fines under Secre-

tary Watt, attorney Vince Laubach was ordered to move heavy office furniture despite serious back problems. He was forced to leave federal service and remains in constant pain a decade later.

Eliminate Their Jobs

A common tactic is to lay off whistleblowers even as the company or agency is hiring new staff. Employers may "reorganize" whistleblowers out of jobs or into marginal positions. A related tactic is to eliminate—through reorganization—the structural independence of particular oversight units. A nuclear engineering firm, for example, may deemphasize the quality control department by making it a component of the production staff.

The Forest Service used this approach twice with its Timber Theft Investigations Branch (TTIB). In 1994 the agency proposed to make the TTIB irrelevant by herding the investigative agents out of the forests and into a downtown office building. When they protested, the agency abolished the unit entirely through a new reorganization in 1995.

One of the most desperate examples of this tactic occurred in 1991, when a Bush administration Executive Order abolished the President's Commission on Executive Exchange (PCEE), a government-corporate exchange program. The PCEE's chief was a former Republican National Committee Co-Chair, and was attempting to turn it into a patronage outpost for the 1992 elections. President Bush issued the Executive Order just before two show-downs—a scheduled congressional follow-up hearing after sustained investigation, and a Whistleblower Protection Act hearing for Gordon Hamel, who faced termination after exposing the scam. By killing the PCEE, the government preempted the congressional hearing and successfully argued that Hamel's whistleblower claim was moot, since he could not be fired from a nonexistent agency.

Paralyze Their Careers

An effective retaliation technique—and one that also sends a signal to other would-be dissenters—is to deep-freeze the careers

of whistleblowers who manage to thwart termination and hold onto their jobs. These employees become living legends of retaliation when employers deny all requests for promotion or transfer. A related tactic is to deny whistleblowers the training needed for professional development. The message is clear: "s/he is going nowhere."

In 1967 meat grader John Coplin was the youngest main station chief in USDA history. After blowing the whistle on improper grading of meat products, he was never again promoted during his remaining 24 years with the agency. Larry King's career was similarly paralyzed when he blew the whistle on long-festering nuclear safety violations that the Nuclear Regulatory Commission was ignoring. King suffered harassment but retained his position. In his efforts to secure another position within government, he applied and was turned down for literally dozens of jobs—despite the fact that he was easily overqualified for several of the positions.

Bad references for future job prospects are common, and any whistleblower settling a legal case should be careful to take this into account. Sometimes the tactic is used subtly. For example, King consistently received excellent or outstanding performance evaluations at the NRC. As he later learned at a Whistleblower Protection Act hearing, however, hidden buzz words were used to signal that he should not be hired. Common examples are statements that an employee "is not always a team player," or "needs to work on maintaining a cooperative relationship with the industry."

Blacklist Them

Sometimes it is not enough merely to fire or make whistleblowers rot in their jobs: the goal is to make sure they "will never work again" in their fields, if possible. After several oil-industry whistleblowers exposed illegal pipeline practices, for example, the company placed them on a list of workers "not to touch" in future hiring.

Resolution Trust Corporation (RTC) whistleblower Richard

Dunn, a quiet financial management expert, thought he had made a fresh start with a big-name accounting firm when he was fired after blowing the whistle on overbilling by contractors who were seeking to exploit failed savings and loans. But a week into his "fresh start," Dunn was summarily dismissed. He later learned that the RTC had told his new boss that he was fired for threatening a co-worker with a gun and therefore was ineligible for the privately-contracted RTC work, a key part of his expertise for the new job. The firearms allegation lacked any substantiation in the RTC's personnel records or elsewhere.

Employers in the scientific professions have exercised perhaps the ugliest form of blacklisting—extradition. Whistleblowing foreign nationals, including students, have been warned that their visas will not be renewed and that the Immigration and Naturalization Service is available to ensure their departure. This tactic has been used in subtle ways by the National Institutes of Health with foreign nationals employed by the agency as consultants.

None of these techniques for retaliating against whistleblowers is unique or new. Over two decades ago, the classic institutional response to whistleblowers was captured in the instructions of President Richard Nixon to top aides H.R. Haldeman and John Ehrlichman. After learning that Pentagon cost-control expert Ernest Fitzgerald had blown the whistle on a \$2 billion cost overrun on a construction contract for a military cargo plane, Nixon said simply, "Fire that son of a bitch."

In 1973 President Nixon took reprisal techniques to a new level. Fred Malek, his Director of the White House Personnel Office, issued the "Malek Manual," a secret report on how to purge the career civil service system of "unresponsive" employees—whistleblowers or Democrats—without running afoul of the law. The reprisal tactics above are largely drawn from the Malek Manual and illustrated with more recent examples. Ironically, whistleblowers exposed the Malek Manual and it was published in the Watergate Committee's report.

NEUTRALIZING DISSENT: THE TACTICS OF COVER UP

The point of the tactics described above is to overwhelm the whistleblower in a struggle for self-preservation—of credibility, career, family, finances and even sanity—until s/he is discredited or silenced, and the issues that triggered the whistleblowing are forgotten. These tactics, however, are only one part of the bureaucratic assault on whistleblowing. In addition to “shooting the messenger,” employers also strive to bury the message by covering up the alleged wrongdoing.

Employers often rely on longstanding tactics of secrecy to cover up institutional misconduct. Large organizations will devise systems and written or unwritten policies for keeping dissent—including information about possible wrongdoing—from surfacing or creating problems for the organization. Some are standing policies. Others are adopted when organizations become aware of their own wrongdoing and seek to avoid getting caught. Still others are put into place after a whistleblower has publicly exposed an instance of misconduct, as a means of damage control. A few illustrative examples of the “smokescreen syndrome” follow.

Gag the Employees

The most direct way to silence potential whistleblowers is to gag employees, through repressive nondisclosure agreements or by excessively designating information “classified.” More subtly, agencies routinely order staff not to respond directly to Congress or the media, but rather to refer all inquiries to a central office in-house. As of early 1997, the Justice Department had a policy that barred environmental staff from speaking with their personal lawyers about information they may want to disclose under the Whistleblower Protection Act. Because they institutionalize prior restraint of speech, these systemic “gag orders” generally have not been upheld when formally challenged in court on First Amendment grounds.

Private employers have their own variation of this tactic—gag orders built into company manuals or employment contracts, followed by civil suits for breaching the contracts or stealing proprietary information. At the Knolls Atomic Plant near Schenectady, New York, workers were threatened with a \$100,000 fine, termination, and life imprisonment if they so much as commented on operations at the facility. The gag order was issued site-wide following a visit by GAP attorneys who spoke to workers about radiation leaks.

Case law is mixed on whether private-sector workers who want to blow the whistle are liable for violating gag orders in employment contracts or company manuals. You will need to do your homework to determine whether any disclosure restrictions apply to you and in what context. If the restrictions are relevant, be sure to consult a lawyer before blowing the whistle.

Institutionalize Conflict-of-Interest

Institutions accused of wrongdoing routinely handle investigations into their own misconduct. In many whistleblower cases, this is the equivalent of appointing the fox to investigate theft in the henhouse.

In one sense, it is only fair (and more efficient) to allow organizations a chance to resolve allegations and straighten out internal problems. That is the point of internal checks and balances: organizations should be willing and able to “clean their own houses.” But when confirmation of misconduct could create liability or threaten government funding, or when individual or organizational leaders are the direct cause of misconduct, this approach inevitably places in-house investigations in a conflict of interest.

During construction of commercial nuclear power plants, the Nuclear Regulatory Commission regularly referred charges from corporate whistleblowers back to the licensee accused of violating safety laws, sometimes identifying the whistleblower in the process. The agency explained that it could not investigate the charges independently due to scarce resources. As a rule, the

Commission then accepted at face value the plant's denials as the final word of the U.S. government on the allegations.

The Forest Service has honed this technique into a fine art. The agency's "whistleblower desk" regularly refers allegations requiring investigation to the same agency officials who would be held responsible for any misconduct. Not surprisingly, these officials rarely find misconduct in their investigations.

The frustrations of a Forest Service criminal investigator illustrate how conflict of interest can kill a significant investigation. A member of the agency's former timber theft strike force, the investigator learned of unprecedented levels of timber theft in the Alaska wilderness. He also discovered that a top manager from his own agency appeared to have played a leading role in covering up the crimes. As the investigator was about to schedule the showdown interview, the Forest Service assigned the suspect as his supervisor. The interview never occurred. The suspect/supervisor not only publicly attacked the investigator's competence and repeatedly canceled investigative trips, but also shattered the case's confidentiality by demanding that he give prior briefings to local Forest Service officials on everything he did. The case has gone nowhere.

Separate Expertise from Authority

The goal of this tactic is to ensure that organizational loyalists make all important decisions, even technical judgment calls, with only a limited advisory role for the experts. As a result of this gambit, Morton Thiokol's engineers were overruled by managers determined to make the disastrous Challenger launch—even though all of the company's practicing engineers opposed the launch. Some managers admonished the engineers to take off their "engineering caps" and put on their "management caps."

One variation on this tactic is to use a rigged version of "the democratic process" to control information and outcomes. Other experts—selected because they are loyalists—are called in to "out-vote" the whistleblower, effectively overruling the scientific method. A more subtle version of this technique is to misuse the peer review process, either as a discrediting tactic by packing the

panel with a particular bias, or as a stalling tactic by instituting duplicative or unnecessary reviews.

One example involved the dissent of Nuclear Regulatory Commission engineer Isa Yin, who investigated and confirmed a whistleblower's charges that the seismic design review at the Diablo Canyon plant had been manipulated. When Yin's investigation threatened to block approval of the plant's license, the NRC appointed a team of 50 engineers to take over and complete the work and to engage in peer review of his findings. At the final licensing vote they disagreed as a bloc with Yin, who found himself arguing the facts in isolation and protesting that he had been denied access to the necessary data. The appeals court stayed the license for five months, in part due to lingering concerns about the handling of Yin's dissent.

Keep Them Ignorant

This tactic is an extreme use of the national security-type "need to know" rule—sometimes legitimate but more often used to hide the truth. The idea is to keep employees too ignorant to threaten the organization. There is often an overlap between this tactic and various reprisal tactics, such as isolation: employers may seek not only to punish whistleblowers, but also to make it impossible for them to gain access to information and evidence.

One technique is to stop employees from gathering evidence of wrongdoing by strangling them in red tape. Managers may pull out technicalities and obscure subsections of procedures to paralyze efforts to gather and disclose information. When a corrupt manager took over the Forest Service's timber theft investigative unit, he ordered particular investigators to stop using several standard investigative techniques, such as driving unmarked cars, appearing out of uniform, or talking with sensitive confidential witnesses. His excuse was that they did not rank high enough in the chain of command. That bureaucratic technicality had not stopped the U.S. Attorney's Office from relying on these investigators for years.

Strategies for removing whistleblowers from information and evidence can also be linked with reprisal tactics such as isolation