on the part of their organization, whistle-blowers also run the risk of violating genuine obligations that employees owe to employers. Employees have an obligation to do the work that they are assigned, to be loyal to their employer, and generally to work for the interest of the company, not against it. In addition, employees have an obligation to preserve the confidentiality of information acquired in the course of their work, and whistle-blowing sometimes involves the release of this kind of information. Cases of whistle-blowing are so wrenching precisely because they involve very strong conflicting obligations. It is vitally important, therefore, to understand when it is morally permissible to blow the whistle and when whistle-blowing is, perhaps, not justified. Our first task, though, is to develop a definition of whistle-blowing.

WHAT IS WHISTLE-BLOWING?

As a first approximation, whistle-blowing can be defined as the release of information by a member or former member of an organization that is evidence of illegal and/or immoral conduct in the organization or conduct in the organization that is not in the public interest. There are several points to observe in this definition.

First, blowing the whistle is something that can be done only by a member of an organization. It is not whistle-blowing when a witness to a crime notifies the police and testifies in court. It is also not whistle-blowing for a reporter who uncovers some illegal practice in a corporation to expose it in print. Both the witness and the reporter have incriminating information, but they are under no obligation that prevents them from making it public. The situation is different for employees who become aware of illegal or immoral conduct in their own organization because they have an obligation to their employer that would be violated by public disclosure. Whistle-blowing, therefore, is an action that takes place within an organization.

The difference is due to the fact that an employee is expected to work only as directed, to go through channels, and, more generally, to act in all matters for the well-being of the organization. Also, the information involved is typically obtained by an employee in the course of his or her employment as a part of the job. Such information is usually regarded as confidential so that an employee has an obligation not to reveal it, especially to the detriment of the employer. To "go public" with information that is damaging to the organization is generally viewed as violating a number of obligations that an employee has as a member of the organization.

Second, there must be information. Merely to dissent publicly with an employer is not in itself blowing the whistle; whistle-blowing necessarily involves the release of *nonpublic information.* According to Sissela Bok, "The whistleblower assumes that his message will alert listeners to something they do not know, or whose significance they have not grasped because it has been kept secret."[13] A distinction can be made between *blowing the whistle* and *sounding the alarm.* Instead of revealing new facts, as whistle-blowers do, dissenters who take a public stand in opposition to an organization to which they belong can be viewed as trying to arouse public concern, to get people alarmed about facts that are already known rather than to tell them something they do not know.

Third, the information is generally evidence of some significant kind of misconduct on the part of an organization or some of its members. The term "whistle-blowing" is usually reserved for matters of substantial importance. Certainly, information about the lack of preparedness by the FBI to protect American citizens against terrorist acts like those on 9/11 would justify the memo that Coleen Rowley sent to the director of her agency. Some whistle-blowing reveals violations of law, such as the accounting fraud at WorldCom that Cynthia Cooper uncovered, but an employee could also be said to blow the whistle about activities that are legal but contrary to the public interest, such as waste and mismanagement in government procurement or threats to the environment. Information of this kind could alert the public and possibly lead to new legislation or regulation. However, merely exposing incompetent or self-serving management or leaking information to influence the course of events is not commonly counted as whistle-blowing. Lacking in these kinds of cases is a serious wrong that could be averted or rectified by whistle-blowing.

Fourth, the information must be released outside normal channels of communication. In most organizations, employees are instructed to report instances of illegal or improper conduct to their immediate superiors, and other means often exist for employees to register their concerns. Some corporations have an announced policy of encouraging employees to submit any suspicions of misconduct in writing to the CEO, with an assurance of confidentiality. Others have a designated official, often called an *ombudsman*, for handling employee complaints. Whistle-blowing does not necessarily involve "going public" and revealing information outside the organization. There can be *internal* as well as *external* whistle-blowing. However, an employee who follows established procedures for reporting wrongdoing is not a whistle-blower. Thus, Watkins, Cooper, and Rowley are probably not whistle-blowers in a precise sense.

A definition of whistle-blowing also needs to take into account *to whom* the whistle is blown. In both internal and external whistle-blowing, the information must be revealed in ways that can reasonably be expected to bring about a desired change. Merely passing on information about wrongdoing to a higher-up or a third party does not necessarily constitute whistle-blowing. Going to the press is often effective because the information ultimately reaches the appropriate authorities. Reporting to a credit-rating agency that a person faces bankruptcy, by contrast, would not usually be an instance of whistle-blowing but of ordinary snitching because the receiving party in this case is not an appropriate authority.

Fifth, the release of information must be something that is done voluntarily, as opposed to being legally required, although the distinction is not always clear. Watkins and Rowley were called to testify before congressional committees. Although such testimony may be legally required, the call to testify may come only after witnesses volunteer that they have incriminating evidence. However, in a state supreme court case, *Petermann* v. *International Brotherhood of Teamsters*, a treasurer for a union had no desire to be a whistle-blower, but he refused to perjure himself before a California state legislative body as he had been ordered to do by his employer.[14] Although Petermann acted with considerable courage, it is not clear whether he should be called a whistle-blower because he had little choice under the circumstances. His testimony was legally compelled.

A sixth point is that whistle-blowing must be undertaken as a moral protest; that is, the motive must be to correct some wrong and not to seek revenge or personal advancement. This is not to deny that a person with incriminating evidence could conceivably be justified in coming forth, whatever the motive. People "go public" for all sorts of reasons—a common one being fear of their own legal liability—and by doing so, they often benefit society. Still, it is useful to draw a line between the genuine whistle-blower and corporate malcontents and intriguers. Because the motives of whistle-blowers are often misperceived in the organization, employees considering the act must carefully examine their own motivation.

Putting all these points together, a more adequate (but unfortunately long-winded) definition of whistle-blowing is as follows: Whistle-blowing is the voluntary release of nonpublic information, as a moral protest, by a member or former member of an organization outside the normal channels of communication to an appropriate audience about illegal and/or immoral conduct in the organization or conduct in the organization that is opposed in some significant way to the public interest.

THE JUSTIFICATION OF WHISTLE-BLOWING

The ethical justification of whistle-blowing might seem to be obvious in view of the laudable public service that whistle-blowers provide—often at great personal risk. However, whistle-blowing has the potential to do great harm to both individuals and organizations.

The negative case against whistle-blowing is given vigorous expression in a widely cited passage from a 1971 speech by James M. Roche, who was chairman of the board of General Motors Corporation at the time. He writes, "Some critics are now busy eroding another support of free enterprise—the loyalty of a management team, with its unifying values of cooperative work. . . . However this is labelled—industrial espionage, whistle blowing, or professional responsibility—it is another tactic for spreading disunity and creating conflict."[15]

In the same vein, Sissela Bok observes that "the whistleblower hopes to stop the game, but since he is neither referee or coach, and since he blows the whistle on his own team, his act is seen as a violation of loyalty."[16]

As these remarks indicate, the main stumbling block in justifying whistle-blowing is the duty of loyalty that employees have to the organization of which they are a part. The public service that whistle-blowers provide has to be weighed against the disruptive effect that the disclosure of information has on bonds of loyalty. Does a person in a position to blow the whistle have a greater obligation to the public or to the organization? Where does the greater loyalty lie?

That we have an obligation to the public is relatively unproblematic; it is the obligation to prevent serious harm to others whenever this is within our power. An obligation of loyalty to an organization is more complex, involving, as it does, questions about the basis of such an obligation and the concept of loyalty itself. What does an employee owe an employer, and, more to the point, does the employment relation deprive an employee of a right to reveal information about wrongdoing in the organization? In order to answer these questions, let us begin with a commonly used argument against the right of an employee to blow the whistle.

The Loyal Agent Argument

According to one argument, an employee is an *agent* of an employer.[17] An agent is a person who is engaged to act in the interests of another person (called a *principal*) and is authorized to act on that person's behalf. This relationship is typical of professionals, such as lawyers and accountants, who are called upon to use their skills in the service of a client. Employees are also considered to be agents of an employer in that they are hired to work for the benefit of the employer. Specifically, an employee, as an agent, has an obligation to work as directed, to protect confidential information, and, above all, to be loyal. All these are seemingly violated when an employee blows the whistle.

The loyal agent argument receives considerable support from the law, where the concept of agency and the obligations of agents are well developed. Although our concern is with the *moral* status of employees, the law of agency is a rich source of relevant insights about the employment relation.[18] According to one standard book on the subject, "an agent is a person who is authorized to act for a principal and has agreed so to act, and who has power to affect the legal relations of his principal with a third party."[19] Agents are employed to carry out tasks that principals are not willing or able to carry out for themselves. Thus, we hire a lawyer to represent us in legal matters where we lack the expertise to do the job properly.

The main obligation of an agent is to act in the interest of the principal. We expect a lawyer, for example, to act as we would ourselves, if we had the same ability. This obligation is expressed in the *Second Restatement of Agency* as follows: "an agent is subject to a duty to his principal to act solely for the benefit of the principal in all matters connected with his agency."[20] The ethical basis of the duty of agents is a contractual obligation or an understood agreement to act in the interests of another person. Lawyers agree for a fee to represent clients, and employees are similarly hired with the understanding that they will work for the benefit of an employer.

Are Whistle-Blowers Disloyal Agents?

At first glance, a whistle-blower is a disloyal agent who backs out of an agreement that is an essential part of the employer–employee relationship. A whistle-blowing employee, according to the loyal agent argument, is like a lawyer who sells out a client—clearly a violation of the legal profession's code of ethics. Closer examination reveals that the argument is not as strong as it appears. Although employees have an obligation of loyalty that is not shared by a person outside the organization, the obligation is not without its limits. Whistle-blowing is not something to be done without adequate justification, but at the same time, it is not something that can never be justified.

First, the law of agency does not impose an absolute obligation on employees to do whatever they are told. Rather, an agent has an obligation, in the words of the *Second Restatement*, to obey all *reasonable* directives of the principal. This is interpreted to exclude illegal or immoral

acts; that is, employees are not obligated as agents to do anything illegal or immoral—even if specifically instructed by a superior to do so. Questions can arise, of course, about the legal and moral status of specific acts. Is an agent free to disobey an order to do something that is suspect but not clearly illegal or immoral, for example? Borderline cases are unavoidable, but in situations where a crime is being committed or people are exposed to the risk of serious injury and even death, the law of agency is clear: An employee has no obligation to obey.

The law of agency further excludes an obligation to keep confidential any information about the commission of a crime. Section 395 of the *Second Restatement of Agency* reads in part: "An agent is privileged to reveal information confidentially acquired . . . in the protection of a superior interest of himself or a third person." The *Restatement* does not define what is meant by a "superior interest" except to note that there is no duty of confidentiality when the information is about the commission of a crime. "[I]f the confidential information is to the effect that the principal is committing or is about to commit a crime, the agent is under no duty not to reveal it."[21] Protecting oneself from legal liability can reasonably be held to be a "superior interest," as can preventing some serious harm to others.

Second, the obligations of an agent are confined to the needs of the relationship. In order for a lawyer to represent a client adequately, it is necessary to impose a strong obligation of loyalty, but the obligation of loyalty required for employees to do their job adequately is less stringent. The obligation of agents to follow orders exactly stems, in part, from the fact that they may be binding the principal to a contract or exposing the principal to tort liability. The duty of confidentiality is justified by the legitimate right of an employer to maintain the secrecy of certain vital information. Thus, Coleen Rowley is legally barred, for good reason, from divulging information about an investigation. She could not have "gone public" with her information without violating her duty as an FBI agent.

Employees are hired for limited purposes, however. As Alex Michalos points out, a person who has agreed to sell life insurance policies on commission is committed to performing *that* activity as a loyal agent. "It would be ludicrous," he continues, "to assume that the agent has also committed himself to painting houses, washing dogs, or doing anything else that happened to give his principal pleasure."[22] Similarly, a quality control inspector is not hired to overlook defects, falsify records, or do anything else that would permit a danger to exist. Information about irregularities in safety matters is also not the kind that the employer has a right to keep confidential, because it is not necessary to the normal operation of a business.

To conclude, the loyal agent argument does not serve to show that whistle-blowing can never be justified. The obligations that employees have as agents of an organization are of great moral importance, but they do have limits. Specifically, the agency relation does not require employees to engage in illegal or immoral activities or to give over their whole life to an employer.

The Meaning of Loyalty

The concept of loyalty itself raises some questions. One is whether whistle-blowing is always an act of disloyalty or whether it can sometimes be done out of loyalty to the organization. The answer depends, in part, on what we mean by the term "loyalty." If loyalty means merely following orders and not "rocking the boat," then whistle-blowers are disloyal employees. But loyalty can also be defined as a commitment to the true interests or goals of the organization, in which case whistle-blowers are often very loyal employees. Thus, whistle-blowing is not necessarily incompatible with loyalty, and, indeed, in some circumstances, loyalty may require employees to blow the whistle on wrongdoing in their own organization.

All too often, the mistake of the whistle-blower lies not in being disloyal to the organization as such but in breaking a relation of trust with a few key members of an organization or with associates and immediate superiors. Insofar as an employee has a duty of loyalty, though, it cannot be merely to follow orders or to go along with others. Loyalty means serving the interests

Conditions for Justified Whistle-Blowing

The following are some questions that should be considered in deciding whether to blow the whistle in a specific case.[27]

1. *Is the situation of sufficient moral importance to justify whistle-blowing?* A cover-up of lethal side effects in a newly marketed drug, for example, is an appropriate situation for disclosure because people's lives are at stake. But situations are not always this clear. Is whistle-blowing warranted if the side effects are not lethal or debilitating but capable of causing temporary discomfort or pain? What if the drug is the most effective treatment for a serious medical problem, so that the harm of the side effect is outweighed by the benefit of using the drug? In such a case, we need to ask how serious is the potential harm compared with the benefit of the drug and the trouble that would be caused by blowing the whistle. The less serious the harm, the less appropriate it is to blow the whistle. In addition to the moral importance of the situation, consideration should also be given to the extent to which harm is a direct and predictable result of the activity that the whistle-blower is protesting. For example, a toy that might be hazardous under unusual circumstances warrants whistle-blowing less than one that poses a risk under all conditions. Sissela Bok contends that the harm should also be imminent. According to her, an alarm can be sounded about defects in a rapid-transit system that is already in operation or is about to go into operation, but an alarm should not be sounded about defects in a system that is still on the drawing boards and is far from being operational.[28]

2. *Do you have all the facts and have you properly understood their significance?* Whistle-blowing usually involves very serious charges that can cause irreparable harm if they turn out to be unfounded or misinterpreted. A potential whistle-blower, therefore, has a strong obligation to the people who are charged with wrongdoing to make sure that the charges are well founded. The whistle-blower should also have as much documentation and other corroboration as possible. A whistle-blower's case is stronger when the evidence consists of verifiable facts and not merely hunches or rumors. Because whistle-blowing cases often end up in court, the proof should also be strong enough to stand up under scrutiny. The support for the charges need not be overwhelming, but it should meet the ordinary legal standard of a preponderance of the evidence. Employees often have access to only some of the facts of a case and are liable, as a result, to form false or misleading impressions. Would-be whistle-blowers must be careful, therefore, not to jump to conclusions about matters that higher-level managers, with a fuller knowledge of the situation, are in a better position to judge. Typically, employees have only one kind of expertise, so they are not able to make an accurate judgment when different kinds of knowledge are needed.

3. *Have all internal channels and steps short of whistle-blowing been exhausted?* Whistle-blowing should be a last rather than a first resort. It is justified only when there are no morally preferable alternatives. The alternatives available to employees depend to a great extent on the provisions an organization makes for dissent, but virtually every organization requires employees to take up any matter of concern with an immediate superior before proceeding further—unless that person is part of the problem. Courts will generally not consider a complaint unless all possible appeals within an organization have been exhausted. Some progressive corporations have recognized the value of dissent in bringing problems to light and have set up procedures that allow employees to express their concern through internal channels. Steps of this kind reduce the need for whistle-blowing and the risks that external whistle-blowers take. It is possible to justify not using internal channels, however, when the whole organization is so mired in the wrongdoing that there is little chance that using them would succeed. Another justification for "going public" before exhausting internal channels is the need for a quick response when internal whistle-blowing would be too slow and uncertain. Two engineers at Morton Thiokol expressed concern to their superiors about the effects of low temperature on the O-rings on the booster rockets for the *Challenger* spacecraft, but their warning never reached the officials at NASA who were responsible for making the decision to go ahead with the launch. The engineers spoke out after the *Challenger* explosion—for which they were disciplined by Morton Thiokol—but their whistle-blowing was too late to avert the disaster. To be effective, they would have had to blow the whistle before the decision was

made to launch the spacecraft. This would have required them to go outside the company and contact the officials at NASA directly.

4. *What is the best way to blow the whistle?* Once a decision is made to "go public," a host of other questions have to be answered. To whom should the information be revealed? How much information should be revealed? Should the information be revealed anonymously or accompanied by the identity of the whistle-blower? Often an anonymous complaint to a regulatory body, such as the Environmental Protection Agency or the Securities and Exchange Commission, is sufficient to spark an investigation. The situation might also be handled by contacting the FBI or a local prosecuting attorney or by leaking information to the local press. The less information that is revealed, the less likely an employee is to violate any duty of confidentiality. Employees can also reduce conflicts by waiting until they leave an organization to blow the whistle. Whistle-blowing is also more likely to be effective when an employee presents the charge in an objective and responsible manner. It is especially important that a whistle-blower stick to the important issues and refrain from conducting crusades or making personal attacks on the persons involved. Organizations often seek to discredit whistle-blowers by picturing them as disgruntled misfits or crazy radicals; intemperate, wide-ranging attacks undermine the whistle-blower's own credibility. Many whistle-blowers recommend developing a clear plan of action. Do not blow the whistle impulsively, they advise, but think out each step and anticipate the possible consequences.[29]

5. *What is my responsibility in view of my role in the organization?* The justification for blowing the whistle depends not only on the wrongdoing of others but also on the particular role that a whistle-blower occupies in an organization. Thus, an employee is more justified in blowing the whistle—and may even have an obligation to do so—when the wrongdoing concerns matters over which the employee has direct responsibility. When an employee is a professional, the question of whether to blow the whistle must be considered in the context of professional ethics. Professionals, such as lawyers, accountants, and engineers, have a greater obligation to blow the whistle under some circumstances and are restricted or prohibited from whistle-blowing under others.

6. *What are the chances for success?* Insofar as whistle-blowing is justified because of some good to the public, it is important to blow the whistle only when there is a reasonable chance of achieving that good. Whistle-blowing may be unsuccessful for many reasons. Sometimes the fault lies with the whistle-blower who fails to make a case that attracts widespread concern or to devise an effective plan of action; other times it is simply that the organization is too powerful or the public not sufficiently responsive.

IS THERE A RIGHT TO BLOW THE WHISTLE?

Even though whistle-blowing can be justified in some situations, the sad fact remains that courageous employees who perform a valuable public service are often subjected to harsh retaliation. Our reaction when this occurs is, "There ought to be a law!" and, indeed, many have been proposed in Congress and various state legislatures.[30] Few have passed, however, and there are some strong arguments against providing legal protection for whistle-blowers. In this section, we will examine the debate over the moral justification of laws to protect whistle-blowers against retaliation. It will be useful, first, to survey the existing legal protection.

Existing Legal Protection

Retaliation against federal employees who report instances of waste and corruption in government is prohibited by the Civil Service Reform Act of 1978, which also set up the Merit System Protection Board (MSPB) to receive and act on complaints of retaliation.[31] The provisions of this act were strengthened by the Whistleblower Protection Act of 1989, which allows the Office of Special Counsel to represent federal employees before the MSPB and provides numerous procedural safeguards. Still, the act has many loopholes that Congress has been reluctant to close despite widespread dissatisfaction among federal employees.