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Some perspectives on whistleblowing

whistleblower: a person who alerts the public to some scandalous practice or evidence of corruption on the part of someone else

— *The Macquarie Dictionary*, 2nd edn

Martin & Schinzinger claim that whistleblowing is the most controversial topic in engineering ethics. That may be so. It involves matters of trust and loyalty on one hand and trust and honesty on the other. Its critical feature is the passing of information, outside the officially endorsed channel, to someone who is seen as capable of fixing a perceived problem. The ‘spy’ has always had moral ambiguity in human history, performing what some see as a valuable role, but never accepted as an entirely trustworthy person.

Distinguish between *internal* and *external* whistleblowing. In the former, the information is conveyed while bypassing the normal internal reporting hierarchy of an organisation to reveal concerns to people in higher authority. In many cases, this suffices to resolve a problem, which is found not to be with the organisation itself but with one particular person/group who critical control of some decisions. In external whistleblowing, the information is taken to the public.

Distinguish between the case when the whistleblower remains *anonymous* and acts through a third party (e.g. journalist) and the case when the whistleblower is *open* about his/her identity.

Note that a person need not be a member of an organisation to expose its wrong-doing. Journalists do this all the time. However, from the perspective of professional ethics, it is the primary source handling internal information that is relevant to our considerations.

Considerations for a whistleblower

People would do the right thing if they could get away with it.

— Ernest Fitzgerald, Pentagon whistleblower

Whistleblowing, either internal or external to an organisation, incurs costs, and therefore some good should be achievable to justify it. The response to whistleblowing for the whistleblower may be severe: ostracism, unreasonable job assignments, blacklisting, harassment, psychiatric assessment, & lawsuits. In any case, it is always an excessively stressful event as it damages relationships that were and may still be very important to the individual. In many cases, the whistleblower subsequently wishes that she/he had not done it.

De George succinctly listed five conditions to determine the ethical status of external whistleblowing in the case of a private firm (other considerations may apply to public organisations). If the first three are satisfied, whistleblowing will be *ethically justifiable* and permissible. If the last two are also satisfied, whistleblowing will be *ethically obligatory*.

- (i) The firm, through its product or policy, will do *serious harm* to the public.

- (ii) Once the employees identify a serious threat to the user of a product or to the general public, he/she should report it to their immediate superior and make their ethical concern known. Unless she/he does so, whistleblowing is not clearly justifiable.
- (iii) If one's immediate superior does nothing effective about the concern, the employee should *exhaust the internal procedures* and possibilities within the firm. This usually will involve taking the matter up the managerial ladder, and, if necessary — and possible — to the board of directors.
- (iv) The whistleblower must have documented *evidence that would convince* a reasonable, impartial observer that her/his own view of the situation is correct, and that the company's product or practice poses a serious and likely danger.
- (v) The employee must have good reasons to believe that by going public the necessary *changes will happen*. The chance of being successful must be worth the risk one takes and the danger to which one is exposed.

EA has previously published some guidance for whistleblowers.

In the course of a member's employment, situations may arise concerning the employer or client organisation, which may present the member with a significant moral problem. These could include criminal behaviour, threats to public safety or unethical policies. Depending upon the particular circumstances a member may have responsibility under the provisions of the Code of Ethics to ensure that any such practices are brought to the attention of those with direct authority to rectify the problem or to raise the matter elsewhere.

The making of an authorised statements differs from the broader aspects of public comment or statements in that it normally involves access to and disclosure of privileged information, either directly or indirectly, which information is not otherwise in the public domain. Comment on the information available may lie outside a member's area of competence.

When a member has or is intending to make such disclosure the member might consider the following issues as a matter of practicality.

- *Make any objections to unethical practices promptly so as to avoid any misinterpretation of the motives for doing so.*
- *Focus on the issues and proceed in a tactful, low-key manner to avoid unnecessary personal antagonism, which might distract attention from solving the problem.*
- *Keep supervisors informed of your actions, as much as possible, both through informal discussion and formal memoranda.*
- *Be accurate in your observations and claims, and keep formal records documenting relevant events.*
- *Raise the problem initially through normal organisational channels.*
- *Consult colleagues for advice and avoid isolation.*

- *Consult with an Office Bearer nominated by the Congress of the Institution on the ethical issues involved, or with other organisations as appropriate.*
- *Seek legal advice concerning potential legal liabilities.*

Whistleblowing is a very serious matter for an organisation, external whistleblowing particularly so. It involves allegations of malpractice and/or corruption. It risks the reputation of the organisation and everyone in it. Because the matter is so important, the importance of careful procedure & effectiveness must be stressed. Some people see the whistleblower as self-sacrificially heroic, going beyond what is ethically required. On the other hand, some dismiss them as self-seeking, publicists.

on Organisations

Most whistleblowers begin the process believing in the integrity of their own organisations and expecting them to fix the problem, once made aware of the circumstances.

Organisations make mistakes; it is an inherent part of innovation and progress. But progress is only made when a mistake is accepted and lessons are learnt. The profession is ideally served when we can all learn from everyone else's mistakes but organisations, naturally enough, want to hide their mistakes.

One must distinguish justified whistleblowing from mere trouble-making. (Ethical management should be concerned about the latter.) Proper internal procedures can avoid the perceived need for people to go public.

Protecting whistleblowers

Mellor discusses some whistleblowing cases in Australia and concludes, "The onus is on the federal and state governments to improve the whistleblower's lot. There will be problems. How, for instance, can legislation be drawn up that distinguishes between the public interest whistleblower and the malevolent employee with a grudge? And, if there were legislation that could save a whistleblower's job, how could it prevent subtle discrimination, even persecution, in the workplace? But whistleblower legislation is clearly a key element in the battle against corruption."

NSW has made some legislative changes to provide partial protection for whistleblowers in the public sector. One problem in getting legislative changes is that governments have secrets, too, that they don't want publicised.

Consider then, the importance of support mechanisms for justified whistleblowing and the effectiveness of public inquiries: *Without a remedy there is no right.*'

— Ernest Fitzgerald, Pentagon whistleblower.

References

- R. de George (1990), *Business Ethics*, 3rd edn, Macmillan, p 208 et seq
Engineer Australia's *2000 Code of Ethics*, p 7
Martin & Schinzinger, ch 6
B. Mellor (1991), "Integrity and Ruined Lives", *Time*, 21 Oct 1991, pp 46-51

The appearance of the web-site **WikiLeaks** has heightened interest in whistleblowing. “WikiLeaks is a multi-jurisdictional public service designed to protect whistleblowers, journalists and activists who have sensitive materials to communicate to the public. Since July 2007, we have worked across the globe to obtain, publish and defend such materials, and, also, to fight in the legal and political spheres for the broader principles on which our work is based: the integrity of our common historical record and the rights of all peoples to create new history. We believe that transparency in government activities leads to reduced corruption, better government and stronger democracies. All governments can benefit from increased scrutiny by the world community, as well as their own people. We believe this scrutiny requires information. Historically that information has been costly — in terms of human life and human rights. But with technological advances — the internet, and cryptography — the risks of conveying important information can be lowered.”
— wikileaks.org/wiki/WikiLeaks>About

Perhaps the most famous and successful whistleblower in recent history was **Deep Throat**. The Watergate Scandal grew from illegal activities by US President Richard Nixon and his aides related to the burglary and wiretapping of the national headquarters of the Democratic Party at the Watergate office complex in Washington; eventually it came to encompass allegations of other loosely related crimes committed both before and after the break-in. The five men involved in the burglary, who were hired by the Republican Party’s Committee to Re-elect the President, were arrested and charged on 17 June, 1972. In the days following the arrests Nixon secretly directed the White House lawyer, John Dean, to oversee a ‘cover-up’ to conceal the administration’s involvement. Nixon also obstructed the Federal Bureau of Investigation in its inquiry and authorised secret cash payments to the Watergate burglars in an effort to prevent them from implicating the administration. Several major newspapers investigated the possible involvement of the White House in the burglary. Leading this was *The Washington Post* and its two reporters, Carl Bernstein and Bob Woodward, whose stories were based largely on information from an unnamed source called “Deep Throat.” ... Faced with the near-certain prospect of impeachment and conviction by Congress, Nixon announced his resignation on 8 August, 1974.
— *Encyclopaedia Britannica* (2002)

Australia’s best known contemporary whistleblower is the new parliamentarian **Andrew Wilke**. He was an Australian intelligence officer who exposed the faulty use of intelligence about WMD in the lead-up to the Iraq War 2003. He resigned from his then job amidst intense vilification by the Howard Government, and now appears likely to win the Federal Parliamentary seat of Denison as an independent. With independent members set to have some influence on the legislative agenda, he has nominated protection of whistleblowers as an area of interest: “Australia has no Federal whistleblower legislation. It is an extraordinary gap in our legislation. Most of the states have whistleblower legislation. There have been attempts for decades now in Canberra to get Federal whistleblower legislation. You know, I experienced first-hand the difficulties of being a whistleblower in Canberra. I would like to do everything I can to ensure that what I went through seven and a half years ago is not something that other people have to go through in the future. You know Australia is a tough place to be a whistleblower.”