

# What People Do Matters \*

## The Morality of Whistle-Blowing

Computer scientists, like other professionals, may find a conflict between their other loyalties and their obligation to protect the public's health, privacy, and general welfare. In this reading, Sissela Bok analyzes the conflicting pressures on professionals, and offers guidance about when they should "blow the whistle".

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"Whistle-blower" is a recent label for those who ...make revelations meant to call attention to negligence, abuses, or dangers that threaten the public interest. They sound an alarm based on their expertise or inside knowledge, often from within the very organization in which they work. With as much resonance as they can muster, they strive to breach secrecy, or else arouse an apathetic public to dangers everyone knows about but does not fully acknowledge.<sup>1</sup> ...Most [whistle-blowers know] that their alarms pose a threat to anyone who benefits from the ongoing practice and that their own careers and livelihood may be at risk. The lawyer who breaches confidentiality in reporting bribery by corporate clients knows the risk, as does the nurse who reports on slovenly patient care in a hospital, the engineer who discloses safety defects in the braking systems of a fleet of new rapid-transit vehicles, or the industrial worker who speaks out about hazardous chemicals seeping into a playground near the factory dump.

Would-be whistle-blowers also face conflicting pressures from without. In many professions, the prevailing ethic requires above all else loyalty to colleagues and to clients; yet the formal codes of professional ethics stress responsibility to the public in cases of conflict with such loyalties. Thus the largest professional engineering society asks members to speak out against abuses threatening the safety, health, and welfare of the public.<sup>2</sup> A number of business firms have codes making similar requirements; and the United States Code of Ethics for government servants asks them to "expose corruption

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wherever uncovered“ and to “put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department. ”<sup>3</sup> Regardless of such exhortations, would-be whistle-blowers have reason to fear the results of carrying out the duty to reveal corruption and neglect. However strong this duty may seem in principle, they know that in practice, retaliation is likely. They fear for their careers and for their ability to support themselves and their families.

## Blowing the Whistle

The alarm of the whistle-blower is meant to disrupt the status quo: to pierce the background noise, perhaps the false harmony, or the imposed silence of “business as usual.” Three elements, each jarring, and triply jarring when conjoined, lend acts of whistle-blowing special urgency and bitterness: dissent, breach of loyalty, and accusation.<sup>4</sup>

Like all *dissent*, first of all, whistle-blowing makes public a disagreement with an authority or a majority view. But whereas dissent can arise from all forms of disagreement with, say, religious dogma or government policy or court decisions, whistle-blowing has the narrower aim of casting light on negligence or abuse, of alerting the public to a risk and of assigning responsibility for that risk.

It is important, in this respect, to see the shadings between the revelations of neglect and abuse which are central to whistle-blowing, and dissent on grounds of policy. In practice, however, the two often come together. Coercive regimes or employers may regard dissent of any form as evidence of abuse or of corruption that calls for public exposure. And in all societies, persons may blow the whistle on abuses in order to signal policy dissent. Thus Daniel Ellsberg, in making his revelations about government deceit and manipulation in the Pentagon Papers, obviously aimed not only to expose misconduct and assign responsibility but also to influence the nation’s policy toward Southeast Asia.

In the second place, the message of the whistle-blower is seen as a *breach of loyalty* because it comes from within. The whistle-blower, though he is neither referee nor coach, blows the whistle on his own team. His insider’s position carries with it certain obligations to colleagues and clients. He may have signed a promise of confidentiality or a loyalty oath. When he steps out of routine channels to level accusations, he is going against these obligations. Loyalty to colleagues and to clients comes to be pitted against concern for

the public interest and for those who may be injured unless someone speaks out. Because the whistle-blower criticizes from within, his act differs from muckraking and other forms of exposure by outsiders. Their acts may arouse anger, but not the sense of betrayal that whistle-blowers so often encounter.

The conflict is strongest for those who take their responsibilities to the public seriously, yet have close bonds of collegiality and of duty to clients as well. They know the price of betrayal. They know, too, how organizations protect and enlarge the area of what is concealed, as failures multiply and vested interests encroach. And they are aware that they violate, by speaking out, not only loyalty but usually hierarchy as well.

It is the third element of *accusation*, of calling a “foul” from within, that arouses the strongest reactions on the part of the hierarchy. The charge may be one of unethical or unlawful conduct on the part of colleagues or superiors. Explicitly or implicitly, it singles out specific groups or persons as responsible: as those who knew or should have known what was wrong and what the dangers were, and who had the capacity to make different choices. If no one could be held thus responsible – as in the case of an impending avalanche or a volcanic eruption – warning would not constitute whistle-blowing.

Not only immediacy but also specificity is needed for the whistle-blower to assign responsibility. A concrete risk must be at issue rather than a vague foreboding or a somber prediction. The act of whistle-blowing differs in this respect from the lamentation or the dire prophecy.

Such immediate and specific threats would normally be acted upon by those at risk. But the whistle-blower assumes that his message will alert listeners to a threat of which they are ignorant, or whose significance they have not grasped. It may have been kept secret by members within the organization, or by all who are familiar with it. Or it may be an “open secret,” seemingly in need only of being pointed out in order to have its effect. In either case, because of the elements of dissent, breach of loyalty, and accusation, the tension between concealing and revealing is great. It may be intensified by an urge to throw off the sense of complicity that comes from sharing secrets one believes to be unjustly concealed, and to achieve peace of mind by setting the record straight at last. Sometimes a desire for publicity enters in, or a hope for revenge for past slights or injustices. Colleagues of the whistle-blower often suspect just such motives; they may regard him as a crank, publicity-hungry, eager for scandal and discord, or driven to indiscretion by his personal biases and shortcomings.<sup>5</sup>

On the continuum of more or less justifiable acts of whistle-blowing, the whistle-blower tends to see more such acts as justified and even necessary than his colleagues. Bias can affect each side in drawing the line, so that each takes only some of the factors into account – more so if the action comes at the end of a long buildup of acrimony and suspicion.

## **The Leak**

Both leaking and whistle-blowing can be used to challenge corrupt or cumbersome systems of secrecy – in government as in the professions, the sciences, and business. Both may convey urgently needed warnings, but they may also peddle false information and vicious personal attacks. How, then, can one distinguish the many acts of revelation from within that are genuinely in the public interest from all the petty, biased, or lurid tales that pervade our querulous and gossip-ridden societies? Can we draw distinctions between different messages, different methods and motivations? We clearly can, in a number of cases. Whistle-blowing and leaks may be starkly inappropriate when used in malice or in error, or when they lay bare legitimately private matters such as those having to do with political belief or sexual life. They may, just as clearly, offer the only way to shed light on an ongoing practice such as fraudulent scientific research or intimidation of political adversaries; and they may be the last resort for alerting the public to a possible disaster. Consider, for example, the action taken by three engineers to alert the public to defects in the braking mechanisms of the Bay Area Rapid Transit System (BART):

The San Francisco Bay Area Rapid Transit System opened in 1972. It was heralded as the first major breakthrough toward a safe, reliable, and sophisticated method of mass transportation. A public agency had been set up in 1952 to plan and carry out the project; and the task of developing its major new component, a fully automatic train control system, was allocated to Westinghouse.

In 1969, three of the engineers who worked on this system became increasingly concerned over its safety. They spotted problems independently, and spoke to their supervisors, but to no avail. They later said they might well have given up their effort to go farther had they not found out about one another. They made

numerous efforts to speak to BART's management. But those in charge were already troubled by costs that had exceeded all projections, and by numerous unforeseen delays. They were not disposed to investigate the charges that the control system might be unsafe. Each appeal by the three engineers failed. Finally, the engineers interested a member of BART's board of trustees, who brought the matter up at a board meeting. Once again, the effort failed. But in March 1973, the three were fired once the complaint had been traced to them. When they wrote to ask why they had been dismissed, they received no answer. Meanwhile, the BART system had begun to roll. The control system worked erratically, and at times dangerously. A month after the opening, one train overshot the last station and crashed into a parking lot for commuters. Claiming that some bugs still had to be worked out, BART began to use old-fashioned flagmen in order to avoid collisions.

The three engineers had turned, in 1972, to the California Society of Professional Engineers for support. The Society, after investigating the complaint, agreed with their views, and reported to the California State legislature. It too had launched an investigation, and arrived at conclusions quite critical of BART's management.

The engineers filed a damage suit against BART in 1974, but settled out of court in 1975. They had difficulties finding new employment, and suffered considerable financial and emotional hardship in spite of their public vindication.<sup>6</sup>

The three engineers were acting in accordance with the law and with engineering codes of ethics in calling attention to the defects in the train control system. Because of their expertise, they had a special responsibility to alert the company, and if need be its board of directors and the public, to the risks that concerned them. If we take such a clear-cut case of legitimate whistle-blowing as a benchmark, and reflect on what it is about it that weighs so heavily in favor of disclosure, we can then examine more complex cases in which speaking out in public is not so clearly the right choice or the only choice.

## Individual Moral Choice

What questions might individuals consider, as they wonder whether to sound an alarm? How might they articulate the problem they see, and weigh its seriousness before deciding whether or not to reveal it? Can they make sure that their choice is the right one? And what about the choices confronting journalists or other asked to serve as intermediaries?

In thinking about these questions, it helps to keep in mind the three elements mentioned earlier: dissent, breach of loyalty, and accusation. They impose certain requirements: of judgment and accuracy in dissent, of exploring alternative ways to cope with improprieties that minimize the breach of loyalty, and of fairness in accusation. The judgment expressed by whistle-blowers concerns a problem that should matter to the public. Certain outrages are so blatant, and certain dangers so great, that all who are in a position to warn of them have a *prima facie* obligation to do so. Conversely, other problems are so minor that to blow the whistle would be a disproportionate response. And still others are so hard to pin down that whistle-blowing is premature. In between lie a great many of the problems troubling whistle-blowers. Consider, for example, the following situation:

An attorney for a large company manufacturing medical supplies begins to suspect that some of the machinery sold by the company to hospitals for use in kidney dialysis is unsafe, and that management has made attempts to influence federal regulatory personnel to overlook these deficiencies.

The attorney brings these matters up with a junior executive, who assures her that he will look into the matter, and convey them to the chief executive if necessary. When she questions him a few weeks later, however, he tells her that all the problems have been taken care of, but offers no evidence, and seems irritated at her desire to learn exactly where the issues stand. She does not know how much further she can press her concern without jeopardizing her position in the firm.

The lawyer in this case has reason to be troubled, but does not yet possess sufficient evidence to blow the whistle. She is far from being as sure of her case ... as the engineers in the BART case, whose professional expertise,' allowed

them to evaluate the risks of the faulty braking system. . . The engineers would be justified in assuming that they had an obligation to draw attention to the dangers they saw, and that anyone who shared their knowledge would be wrong to remain silent or to suppress evidence of the danger. But if the attorney blew the whistle about her company's sales of machinery to hospitals merely on the basis of her suspicions, she would be doing so prematurely. At the same time, the risks to hospital patients from the machinery, should she prove correct in her suspicions, are sufficiently great so that she has good reason to seek help in looking into the problem, to feel complicitous if she chooses to do nothing, and to take action if she verifies her suspicions.

Her difficulty is shared by many who suspect, without being sure, that their companies are concealing the defective or dangerous nature of their products – automobiles that are firetraps, for instance, or canned foods with carcinogenic additives. They may sense that merely to acknowledge that they don't know for sure is too often a weak excuse for inaction, but recognize also that the destructive power of adverse publicity can be great. If the warning turns out to have been inaccurate, it may take a long time to undo the damage to individuals and organizations. As a result, potential whistle-blowers must first try to specify the degree to which there is genuine impropriety, and consider how imminent and how serious the threat is which they perceive.

If the facts turn out to warrant disclosure, and if the would-be-whistle-blower has decided to act upon them in spite of the possibilities of reprisal, then how can the second element—breach of loyalty—be overcome or minimized? Here, as in the Pentagon Papers case, the problem is one of which set of loyalties to uphold. Several professional codes of ethics, such as those of engineers and public servants, facilitate such a choice at least in theory, by requiring that loyalty to the public interest should override allegiance to colleagues, employers, or clients whenever there is a genuine conflict. Accordingly, those who have assumed a professional responsibility to serve the public interest – as had . . . the engineers in the BART case – have a special obligation not to remain silent about dangers to the public.

Before deciding whether to speak out publicly, however, it is important for [whistle-blowers] to consider whether the existing avenues for change within the organization have been sufficiently explored. By turning first to insiders for help, one can often uphold both sets of loyalties and settle the problem without going outside the organization. The engineers in the BART case clearly tried to resolve the problem they saw in this manner, and only reluctantly allowed it to come to public attention as a last resort.

It *is* disloyal to colleagues and employers, as well as a waste of time for the public, to sound the loudest alarm first. Whistle-blowing has to remain a last alternative because of its destructive side effects. It must be chosen only when other alternatives have been considered and rejected. They may be rejected if they simply do not apply to the problem at hand, or when there is not time to go through routine channels, or when the institution is so corrupt or coercive that steps will be taken to silence the whistle-blower should he try the regular channels first.

What weight should an oath or a promise of silence have in the conflict of loyalties? There is no doubt that one sworn to silence is under a stronger obligation because of the oath he has taken, unless it was obtained under duress or through deceit, or else binds him to something in itself wrong or unlawful. In taking an oath, one assumes specific obligations beyond those assumed in accepting employment. But even such an oath can be overridden when the public interest at issue is sufficiently strong. The fact that one has promised silence is no excuse for complicity in covering up a crime or violating the public trust.

The third element in whistle-blowing – accusation – is strongest whenever efforts to correct a problem without going outside the organization have failed, or seem likely to fail. Such an outcome is especially likely whenever those in charge take part in the questionable practices, or have too much at stake in maintaining them.

Given these difficulties, it is especially important to seek more general means of weighing the arguments for and against whistle-blowing; to take them up in public debate and in teaching; and to consider changes in organizations, law, and work practices that could reduce the need for individuals to choose between blowing and “swallowing” the whistle.<sup>7</sup>

Notes:

1. I draw, for this chapter, on my earlier essays on whistle-blowing: “Whistle-blowing and Professional Responsibilities,” in Daniel Callahan and Sissela Bok, eds., *Ethics Teaching in Higher Education* (New York: Plenum Press, 1980), pp. 277-95 (reprinted, “Blowing the Whistle,” in Joel Fleishman, Lance Liebman, and Mark Moore, eds., *Public Duties: The Moral Obligations of Officials* (Cam-



bridge, Mass.: Harvard University Press, 1981), pp. 204-21.

2. Institute of Electrical and Electronics Engineers, Code of Ethics for Engineers, art. 4, *IEEE Spectrum* 12 (February 1975): 65.
3. Code of Ethics for Government Service, passed by the U.S. House of Representatives in the 85th Congress, 1958, and applying to all government employees and officeholders.
4. Consider the differences and the overlap between whistle-blowing and civil disobedience with respect to these three elements. First, whistle-blowing resembles civil disobedience in its openness and its intent to act in the public interest. But the dissent in whistle-blowing, unlike that in civil disobedience, usually does not represent a breach of law; it is, on the contrary, protected by the right of free speech and often encouraged in codes of ethics and other statements of principle. Second, whistle-blowing violates loyalty, since it dissents from within and breaches secrecy, whereas civil disobedience need not and can as easily challenge from without. Whistle-blowing, finally, accuses specific individuals, whereas civil disobedience need not. A combination of the two occurs, for instance, when former CIA agents publish books to alert the public about what they regard as unlawful and dangerous practices, and in so doing openly violate, and thereby test, the oath of secrecy that they have sworn.
5. Judith P. Swazey and Stephen R. Scheer suggest that when whistle-blowers expose fraud in clinical research, colleagues

respond *more* negatively to the whistle-blowers who report the fraudulent research than to the person whose conduct has been reported. See “The Whistleblower as a Deviant Professional: Professional Norms and Responses to Fraud in Clinical Research,” Workshop on Whistleblowing in Biomedical Research, Washington, D.C., September 1981.

6. See Robert J. Baum and Albert Flores, eds., *Ethical Problems in Engineering* (Troy, N.Y.: Center for the Study of the Human Dimension of Science and Technology, 1978), pp. 227-47.
7. Alan Westin discusses “swallowing” the whistle in *Whistle Blowing!*, pp. 10-13. For a discussion of debate concerning whistle-blowing, see Rosemary Chalk, “The Miner’s Canary,” *Bulletin of the Atomic Scientists* 38 (February 1982): pp. 16-22.