

A HANDBOOK FOR COMMITTING THE TRUTH

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*The*  
CORPORATE  
**WHISTLEBLOWER'S**

**SURVIVAL GUIDE**



**TOM DEVINE** *and* **TAREK F. MAASSARANI**

FOREWORD BY DR. JEFFREY WIGAND, SUBJECT OF THE MOVIE, *THE INSIDER*

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Survival Guide***

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# Foreword

by Dr. Jeffrey Wigand

*All that is necessary for the triumph of evil  
is that good men do nothing.*

—EDMUND BURKE

There are concepts and then there are the names we use to describe them. One concept that badly needs a new name is *person of conscience*. Currently, the name used to identify this person is *whistleblower*. But the name *whistleblower* needs to be replaced. Why? The term is laden with pejorative connotations, such as *rat*, *tattletale*, *fink*, and *turncoat*. Obviously, these words signify opprobrium rather than approbation. The word we use to describe a person of conscience should be free of negative connotations. Indeed the word should connote courage, strength, virtue, and an overriding concern for the good of humanity. The term *whistleblower* lacks these properties. The fact is, there is no single word that connotes the meaning of *person of conscience*. So, I propose that instead of using the term *whistleblower* to refer to a person of conscience, we call a spade a spade. A person of conscience should be referred to as a *Person of Conscience*. The capitalization signifies the important role that such Persons play in protecting and promoting the human good.

When I was first introduced to this book while it was still in draft form, it immediately rekindled many memories both pleasant and unpleasant of my experiences as a Person of Conscience. It is my strong belief and conviction that Persons of Conscience deliberately put themselves in harm's way for the betterment of others. Persons of Conscience perform selfless acts that merit accolades rather than disparagement.

In 1988 I accepted a job at the Brown & Williamson Tobacco Corporation (B&W) as vice president of research and development after six months of extensive interviews. B&W was part of the world's



second-largest tobacco concern. Why did I join the company? My primary goal was to use the knowledge I had acquired during 20 years of healthcare experience to save lives by developing a “safer” cigarette and to ultimately see Food and Drug Administration (FDA) approval for tobacco products. I was also hired to modernize an organization steeped in empirical scientific methods. During my tenure I observed, witnessed, and learned about many actions that were clearly unethical. What made these actions unethical? The fact that they were performed for the sole purpose of maximizing profits regardless of the lost lives, lost productivity, and exorbitant healthcare costs.

In 1993 I was fired for protesting the company's continued efforts to conceal the addictive and toxic nature of cigarettes. Sadly, the company eliminated its program to develop a safer product. Why? The program posed a legal liability to the company. If it made a “safer” product, then all the current products were “unsafe.” Lawyers sanitized scientific research and other documents that demonstrated that the company clearly knew that nicotine was addictive and that tobacco products when used as intended killed not only the user but also innocent bystanders and that it knowingly used an additive shown to be a potential human carcinogen. My firing from B&W was the beginning of a deliberate and systematic process of physical and legal intimidation and threats not uncommon to Persons of Conscience (witness the Nixon administration's notorious “Malek/May Manual”).

In early 1994 I started working with CBS *60 Minutes* on what became a successful investigative report to expose just one piece of the fraud perpetrated by Big Tobacco.

I was motivated by determination and righteous indignation for corporate executives who had a total disregard for human life. I was motivated by righteous indignation for corporate lawyers who treated science as the enemy when it obstructed profits and who had the authority to rewrite research findings, falsify company records, remove evidence of public health hazards, and orchestrate a relentless campaign to increase addiction while exposing the user and innocent bystanders to some 5,000 toxic chemicals and 600 chemical additives used in formulating tobacco products to enhance the addiction process, ease initiation, and maintain the addiction, sometimes more carcinogenic than the nicotine itself.

Cooperating with *60 Minutes* led to my secretly working with the FDA on its investigation of cigarette design, addiction, and additives used in tobacco products to foster youth initiation and sustained use. This began an 18-year journey, which undoubtedly included dark moments. My children's lives were threatened. My marriage ended. I was followed. I was subjected to a multimillion-dollar retaliatory investigation and was sued. I had to live 24/7 with armed security forces to protect my family, start my car, or open my mail. I was threatened with criminal prosecution for revealing the truth. And this is all *after* I was fired! Despite being a high-level insider, I had no idea what I would be subjecting myself to when I exposed the lies concealing an industry's secret, indefensible culture. I knew it was going to be a tsunami of sorts and that the truth would win out in the end. My thoughts in the initial phases were of survival rather than a stellar victory.

What is most gratifying is knowing that my action made a difference. My being a Person of Conscience aided 39 state attorneys general in holding the tobacco industry accountable for its widespread and systematic harm. Our combined efforts stimulated a campaign for the regulation of tobacco products as an addictive drug. It led to congressional hearings, Department of Justice investigations resulting in a racketeering trial of the industry, and finally an Oscar-nominated movie, *The Insider*. The most important thing to me, however, was knowing that I helped mitigate the widespread and systematic harm perpetrated by my employer and its industry. I could not be a bystander, choosing to remain silent when I knew that the knowledge I possessed could make a difference. I am often asked if I would do it again and if it was worth it. My response is always an unequivocal "Yes—and in a New York minute."

My journey did not end in 1999 with *The Insider*, which served as a platform to further disseminate the inner workings of the tobacco industry and was an unexpected but welcome final vindication. Indeed my journey is not yet at its endpoint, as it continues today. The fact is, my decision to become a Person of Conscience has led me to true happiness and enabled me to recognize and fulfill my calling.

*The Corporate Whistleblower's Survival Guide* contains the Government Accountability Project's combined lessons learned over three decades of working with thousands of Persons of Conscience. Read it

if you are an employee even thinking about becoming such a Person. At a minimum, you need to know what consequences to expect and the nature of your legal rights. Read it if you are an organizational leader wise enough to listen to messengers instead of silencing them. Anyone should read it to understand what it means to challenge abuses of power and what we risk when corporate secrecy and intimidation prevail. That is ample reason to read and digest the real-life experiences relayed in this book.

Four lessons in particular are worth highlighting and incorporating into your decision-making process:

**1. Be prepared** Being a Person of Conscience will likely be the worst, best, highest-risk, highest-stakes, most inspiring, *and* most disillusioning experience of your life. Your life will never be the same. Do your homework carefully before exposing yourself and have a proactive strategy and plan rather than just being reactive. Share the choices and the decisions with those who will be most affected by them.

**2. Don't quit midstream** If you are going to do that, don't even start. *You must fully commit to your decision, come what may.* If I had allowed the tobacco industry to silence or defeat me, it would have had greater abusive power. Making a difference requires a marathon commitment. It has taken me 18 years to make some difference, but the more I learn, the greater the challenge and the opportunity to make a continued difference in the world arena. Persons of Conscience have a crucial role in society, and their voices need to be heard. History is replete with lessons that illustrate that listening to a Person of Conscience could have prevented numerous tragedies.

**3. Be certain that you have allies** No one can challenge an institution alone. I know. I would have been crushed without the committed support of kindred spirits in my family, my students, the public, the media, crusading lawyers, and government officials who actually were dedicated public servants.

**4. Do not quit until the truth has been fully exposed** Armed with the truth as an individual, you can effectively challenge bureaucratic abuses that are able to continue only if the victims don't know what is being done

to them. This does not contradict the point on alliances. In fact, the truth is the most effective means for building alliances.

If you are faced with the choice of becoming a Person of Conscience, this book will help you make a difference without paying an unnecessary price, as there are many pitfalls in the process that one can avoid. I can assure you that an individual *can* effectively challenge abuses that institutions would prefer remain hidden. Your commitment to the truth will be your most important ally. In the words of W. H. Murray, “The moment that one commits oneself, then Providence moves too.”

—J. S. Wigand, MA, PhD, MAT, ScD

# Introduction: Whistleblowing in Corporate America

The new millennium ushered in a wave of corporate scandals that cheated ordinary shareholders and employees out of billions of dollars in lifetime savings, investments, and pensions. More than two dozen major accounting scandals followed the October 2001 discovery of Enron's sham bookkeeping, bribery, and energy market manipulation. Brought to light by whistleblowers at Enron, WorldCom, and other companies, these revelations seriously strained public confidence in the stock market and set off sweeping congressional reforms.

Legislators moved quickly to pass the Public Company Accounting Reform and Investor Protection Act of 2002—commonly known as Sarbanes-Oxley (SOX). Enforcement actions and criminal convictions continued apace. In 2003 the Securities and Exchange Commission (SEC) entered into a \$1.435 billion settlement with 10 of the United States' largest investment firms over charges that the firms' bankers had inappropriate influence over their own analysts. In 2005 American International Group (AIG), the fourth-largest company in the world, came under investigation for accounting fraud in a scandal that cost the company \$1.64 billion to settle with federal and state authorities and a \$2.7 billion decline in its net worth.<sup>1</sup>

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## **Corporate Whistleblowers Who Paved the Way for Reforms in the Twenty-First Century**

Although governmental whistleblowers long have made headlines, the events surrounding Enron, WorldCom, and other corporate collapses in the early 2000s increasingly brought corporate whistleblowers into the

limelight. The country became aware of corporate misdeeds occurring on an unprecedented level. Two women stood at the center of these realizations.

At Enron, Vice President of Corporate Development Sherron Watkins realized something was wrong with the company's finances. The numbers didn't add up. She wrote a memo to Enron Chief Executive Officer (CEO) and Chairman Ken Lay, trying to raise awareness of the problems before the company self-destructed. Enron's management chose to seek her removal rather than deal with the issues she raised. When Enron came under scrutiny, Watkins was the key witness in bringing the fraud to light.<sup>2</sup>

Cynthia Cooper was vice president of internal audits at WorldCom, now MCI. Her audit of the company's finances uncovered suspicious activities. After being told by her supervisor to delay her analysis for a financial quarter, she continued investigating with her team and took her findings directly to WorldCom's board of directors.<sup>3</sup> Her efforts exposed the corporate fraud that was occurring at the company, sparked serious corrective action that saved MCI from Enron's fate, and focused attention on the questionable independence of corporate audits—an "oversight" mechanism that had come to enable widespread deception in corporate America.

Both of these women made the difficult choice to jeopardize their professional lives to bring wrongdoings they witnessed to the attention of their supervisors. Like most whistleblowers, they experienced tremendous stress and had difficulty retaining their positions, finding new ones, and maintaining their everyday lives outside of the office.<sup>4</sup> Unlike many whistleblowers, however, they both made a difference and received the recognition they deserved. In 2002 they, along with Federal Bureau of Investigation (FBI) whistleblower Coleen Rowley, were named *Time* magazine's Persons of the Year.<sup>5</sup>

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Post-Enron government action did little to stave off the reckless lending practices that arose from decades of government deregulation of the financial industry. Most notably, mortgage companies had been issuing shaky subprime loans and passing on the risk to investors in the gilded form of securitized mortgage credit. The inevitable financial losses in 2007 exposed other precarious loans and inflated assets and triggered a global financial crisis. On September 15, 2008, Lehman Brothers caved, filing the largest bankruptcy in US history. A panic in the financial markets accompanied sagging stock and housing prices, sending many large investment and commercial banks reeling. Congress and the Federal Reserve spent \$700 billion and \$1.2 trillion, respectively, on bailouts and emergency loans to large corporations, including the scandal-mired,

government-sponsored Fannie Mae and Freddie Mac that owned or guaranteed about half of the country's \$12 trillion mortgage market.

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### **A Whistleblower at Lehman Brothers**

As heavy losses pushed Lehman Brothers down the road toward eventual bankruptcy, Senior Vice President Matthew Lee, a 14-year company veteran, sent a letter to senior management in May 2008, warning of accounting irregularities. Lehman's board instructed its auditor, Ernst & Young, to look into the matter. Lee told Ernst & Young investigators that Lehman temporarily moved \$50 billion in assets off its balance sheet to help hide the firm's risks from Wall Street investors and regulators. These concerns faced a dead end when Ernst & Young announced that Lee's allegations were unfounded. In late June, Lee was laid off as part of broader downsizing at the firm, according to Lehman. Lee's concerns were ultimately vindicated by a federal bankruptcy examiner's report released in March 2010.<sup>6</sup>

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In March 2009 corporate America again broke records when Wall Street investment adviser Bernard Madoff pled guilty to running the largest Ponzi scheme in history. After nearly two decades, the house of cards finally collapsed—leaving thousands of investors defrauded of \$65 billion and forcing businesses, charities, and foundations around the world to close shop. Sadly, a whistleblower had spent 10 years trying to alert the government, industry, and press about the fraud. Damaged by the 2008–2009 economic implosion, scandals, and bailouts, public trust in corporate America has yet to be regained.

Unfortunately, corporate wrongdoing is not limited to large accounting firms, financial lenders, and publicly traded corporations. Every year thousands of employees from the full range of business organizations witness wrongdoing on the job. These discoveries may jeopardize the physical or financial well-being of others and endanger our shared environment and economy. Whistleblowers may see managers at a nuclear facility violate safety codes, a chemical company dump hazardous waste unlawfully, or a food-processing plant attempt to sell contaminated meat to consumers.

Most employees remain silent, concluding that it is not their concern or that nothing they could do would stop the problem. Often they cannot afford to get themselves into trouble. Remaining an uninvolved bystander,

however, risks serious consequences for all but the tiny circle that profits from the abuse and deceit. Others choose to bear witness and speak out, seeking to make a difference by “blowing the whistle” on unethical conduct in the workplace. This may sound like an elaborate undertaking, but even a simple note or a frank discussion with one’s supervisors can sometimes suffice to bring about real change or spark retaliation.

At the Government Accountability Project (GAP), we define whistleblowers as individuals who use free-speech rights to challenge abuses of power that betray the public trust. Under the Whistleblower Protection Act (WPA), the legal definition of whistleblowing as applied to government workers is 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.<sup>7</sup> Corporate whistleblower rights, including SOX, are generally organized as witness protection clauses in enforcement provisions of selected parent statutes. Whatever the context, whistleblowers typically are insiders who learn of wrongdoing and decide to speak up about what they know—people of conscience who act for the good of the public at great personal risk.

Whistleblowers’ actions have saved the lives of employees, consumers, and the general public, as well as billions of dollars in shareholder and taxpayer funds. Whistleblowers have averted nuclear accidents, exposed large-scale corporate fraud, and reversed the approval of unsafe prescription drugs. But rather than receive praise for their integrity, they are often targeted for retaliatory investigations, harassment, intimidation, demotion, or dismissal and blacklisting. Ernie Fitzgerald, a whistleblower who exposed billions of dollars of cost overruns at the Pentagon, described whistleblowing as “committing the truth,” because employers often react as if speaking the truth about wrongdoing were tantamount to committing a crime.<sup>8</sup>

GAP was created to help employees “commit the truth” and thereby 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 strategies and the hazards of whistleblowing.



## The Need for This Handbook

In 1977 GAP produced its first whistleblower primer, titled *A Federal Employee's Guide to the Federal Bureaucracy*. Twenty years later GAP distilled the knowledge it had accumulated into a publication titled *The Whistleblower's Survival Guide: Courage without Martyrdom*. Then in 2002 GAP, the Project on Government Oversight (POGO), and Public Employees for Environmental Responsibility (PEER) collaborated to write *The Art of Anonymous Activism: Serving the Public while Surviving Public Service*. Now, with corporate scandals continuing and the development of new private-sector whistleblower protections, we believe it is time to write a handbook tailored to the corporate whistleblower.

*The Corporate Whistleblower's Survival Guide* draws from prior publications and GAP's experience assisting some 5,000 whistleblowers over the past 33 years. Our goal is to share lessons learned so that potential corporate whistleblowers know what they are getting into and can develop proactive strategies both to make a difference and to survive. We hope that a broad audience including concerned citizens, policymakers, journalists, and public interest groups will find its contents helpful in understanding the difficulties and the social significance of whistleblowing. Nevertheless, this handbook was written primarily with one set of readers in mind: private-sector employees of conscience.

Chapter 1 of this survival guide provides guidance for those who are making the weighty decision whether to blow the whistle. Chapter 2 discusses the dangers that whistleblowers face and should weigh into their decision making. Chapter 3 covers survival strategies for how best to blow the whistle and make a difference. It contains tips on how to go forward, often in the absence of adequate legal safeguards, without sacrificing your career. Chapter 4 discusses where to blow the whistle. Chapter 5 suggests possible allies along the way. Chapter 6 details the legal landscape in which the whistleblower stands. Chapter 7 makes recommendations for legislative and corporate reform, providing a blueprint for government and corporate leaders who recognize that it is bad business to silence or eliminate what is often their only warning signal of impending disaster.

The current patchwork of corporate laws fails to provide a coherent and functional system of legal rights. As a rule, instead of protection, whistleblowers who assert their "rights" attract retaliation. The good

news is that corporate whistleblowers can and do survive while bringing about positive change. But survival seldom comes from lawsuits in isolation. The key to committing the truth and getting away with it is strategic legal campaigns grounded in public solidarity that effectively turn information into power. This handbook reviews lessons learned and tactics that have worked despite the law.

Fortunately, times are a-changin'. When GAP was founded in 1977, whistleblowers were considered traitors. It was a weathervane of change when Sherron Watkins and Cynthia Cooper joined FBI attorney Coleen Rowley as the 2002 Persons of the Year. After the 2006 congressional elections, a Democracy Corps survey of likely voters rated strengthening whistleblowers' rights as one of their highest priorities for the new Congress, only behind eliminating illegal government spending.<sup>9</sup>

Accompanying this sea change have been promising shifts in the legal landscape. In 2002 Sarbanes-Oxley pioneered jury access for whistleblowers, which has since been emulated in nine significant laws covering the nuclear, ground transportation, retail commerce, health, and financial industries as well as defense contractors. These more refined statutes have perfected the relatively crude SOX 2002 pioneer statute, which itself was updated in the financial Dodd-Frank law. The Obama administration has appointed the strongest, most experienced team in history to enforce corporate whistleblower laws through administrative adjudication.

And yet the promised land of comprehensive, consistent whistleblower rights is still on the other side of the rainbow. Until that goal is reached, whistleblowers will have to rely on their wits, not necessarily their rights. Hopefully, this book will provide critical guidance on whether and how to commit the truth and thus turn information into power.

## **A Message to Corporate Leaders**

While this handbook is a corporate survival guide for whistleblowers, there is an overarching lesson to be learned by corporate leaders: it is bad business to kill or silence the messenger. Rarely do whistleblowers want to break ranks with their employer or risk being exiled from the workplace. The overwhelming majority are motivated by loyalty to the

company and professional pride in its positive role in society. They first try to work within the corporate system. A 2010 Ethics Resource Center report, supplementing its 2009 National Business Ethics Survey, found that only 4 percent of whistleblowers made their disclosures outside the corporate system, and only 3 percent even to hotlines; 46 percent went to their supervisor.<sup>10</sup> If you respond constructively and in good faith, all the sections in this handbook about strategy, advocacy, and legal rights become irrelevant.

Whistleblowers fear personal and institutional liability. They are concerned with the consequences of nearsighted corporate bureaucrats whose internal misconduct creates long-term threats to the company or society. Instead of remaining silent due to fear of retaliation or cynicism, whistleblowers should be an invaluable asset to corporate leadership in exposing corruption that betrays the company's own interests and the public trust.

When whistleblowers who overwhelmingly are loyal to the company remain "silent observers," you lose. The 2010 Ethics Resource Center report also found that while some 50 percent of employees witness misconduct on the job, roughly 40 percent do not act on their knowledge.<sup>11</sup> Those 40 percent have tremendous potential to prevent or recoup losses. A 2007 PricewaterhouseCoopers global crime survey of more than 5,400 corporations in 40 countries found that over 40 percent had been victimized by one or more serious economic crimes and that 80 percent of that group reported damage or significant damage to their institutions.<sup>12</sup> The average loss from fraud per company was more than \$3.2 million in 2007.<sup>13</sup> Furthermore, PricewaterhouseCoopers reported that whistleblower hotlines as well as internal and external sources were the initial means of detection in 43 percent of the cases, more than the combined results from corporate security, internal audits, fraud risk management, rotation of personnel, and law enforcement.<sup>14</sup> Similarly, a 2008 report of the Association of Certified Fraud Examiners (ACFE), reviewing 959 cases of fraud, credited exposure of 46.2 percent of that fraud to tipsters compared with only 3.2 percent detected by law enforcement; 57.7 percent of the tips came from employees. The ACFE advised that employees "should be encouraged to report illegal or suspicious behavior, and they should be reassured that reports may be made confidentially and that

the organization prohibits retaliation against whistleblowers.”<sup>15</sup> It pays to listen to the messenger.

Senator Charles Grassley (R-IA) calls whistleblowers the “canaries in the coalmine.” Of course no one wants bad news that will disrupt short-term production schedules or profits. But the unwelcome news may be invaluable in preventing disasters that you may not know about until there are garish headlines of scandal or tragedy for which you may be held responsible, with damage control the only option left. At GAP we view a corporation’s response to whistleblowers as a measure of organizational maturity—a test of willingness to defer short-term gratification for long-term benefit. We hope that through your leadership you will make this handbook irrelevant to your employees.

# Deciding to Blow the Whistle

The decision to blow the whistle may be among the most significant choices you will make in your life. We want to help you make the best decision possible.

This book seeks to provide full disclosure of the many risks you are considering. It will explain your rights under the law, outlining both the protections provided for private-sector employees under Sarbanes-Oxley as well as the patchwork of other statutes. We will explore the challenges you face when relying on your legal rights. We will also describe what we have learned about patterns of institutional response against employees who step forward to speak the truth about corporate misconduct.

If you decide to blow the whistle, fully informed of the risks, we want you to do it in a smart and strategic manner that will serve your own interests and lead to positive change. You may want to remain anonymous, or you may choose to go public. You may decide to take your story to the media, or you may 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. Unplanned and uninformed dissent could be the path to professional suicide.

## **What Constitutes a Whistleblower Case?**

Through our work with whistleblowers over the years, GAP has learned which strategies are most likely to be successful and which are recipes

for frustration or failure. GAP has three primary criteria for evaluating potential whistleblower cases:

- 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 the allegations reasonable, and can they be sufficiently substantiated?
- Can the disclosure make a difference beyond the whistleblower's merely risking retaliation?

## **Facing Conflicting Values and Goals**

Your decision about whether and how to blow the whistle is intensely personal. It means making a choice between deeply held and conflicting values. To illustrate, our society celebrates team players and snubs nay-sayers. Yet we also admire rugged individualists and have contempt for bureaucratic sheep who simply go along to get along.

Similarly, no one wants to be viewed as a squealer or tattletale. A common synonym for an informant is a "rat." But we have equal contempt for those who look the other way, do not want to get involved, or make a conscious choice to see nothing. "See no evil, hear no evil, speak no evil" means we have sacrificed our humanity. Consider the words of one nuclear whistleblower: "People have to stop seeing whistleblowers as tattletales . . . I don't know what you do, living in a culture that thinks if you have standards that you're a tattletale."

The conflict of values extends to other aspects of our identity as citizens. Many whistleblowers go public with their dissent in the name of transparency and openness. Another cornerstone of our cherished freedoms, however, is the right to privacy. You will have to choose.

Your decision also raises deeply personal issues of loyalty and livelihood. From many angles you must answer the question, *Loyalty to whom?*

Most people have at their core a fundamental loyalty to their family and, by extension, the company that allows them to support it. As the adage goes, you don't bite the hand that feeds you. We also feel loyalty to

our colleagues with whom we may spend more time than our families. Whistleblowing can risk their livelihoods as well. At the same time, we share a duty of loyalty toward the public, whether our neighborhood, our country, or the global community. There is a basic duty to help enforce the law that goes hand in glove with the rights of citizenship. Whistleblowers are often motivated by a patriotic duty to their country or a civic loyalty to the law and the bedrock principles that guide it.

Any decision about how to act on these conflicting values is not easy, yet it is one that only you can make. At this crossroads, and at many more if you go decide to go forward, the “right” choice means being centered and true to yourself while honoring your responsibilities to those affected by your decision. Whichever choice you make, your life will never be the same. As observed by Professor C. Fred Alford, who has worked closely with whistleblowers after their cases were over, “There is something about blowing the whistle, and suffering the consequences, that takes hold of a whistleblower’s life and never lets go.”<sup>1</sup> Whistleblowers who speak out instead of remain silent always have a common reason: whether right or wrong, for better or worse, they could not live with themselves if they did not get involved.

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### Doing the Right Thing

“I am honored that people think I am a hero . . . but I do not accept that moniker as others are much more deserving of it. I did what was right . . . have no regrets and would do it again. As you see, we were just ordinary people placed in some extraordinary situations and did the right thing as all should do.”

—*Dr. Jeffrey Wigand, former high-ranking tobacco industry executive who disclosed the truth about the industry’s disregard for public health and safety*

“I regret being so naive . . . I think the American public needs to realize that very few federal protection policies are actually really followed. It seems if you see no evil, hear no evil, no harm has really been done. But, if you are really ethical, it is hard to have an easy life. . . . The sad fact is that there are so many environmental crimes that will affect our families . . . everyone will suffer in the long run . . . in health, and also the expensive health bills will have to be paid; the environment will be damaged. People will not hold anyone

responsible, partly because companies don't have the money to clean up this big mess that could have been prevented."

—*Inez Austin, senior engineer who spoke out against hazardous practices at the Hanford nuclear cleanup site*

"If you think what you are doing is right, you should do it, though you have to understand the likely consequences. If you are prepared to accept those consequences, then go for it. I don't regret raising this at all, and I certainly would raise it again. I think you also can't raise these things in a halfhearted way. If you are going to blow the whistle, then you should do it as loudly and publicly as possible."

—*Dr. Aubrey Blumsohn, scientist who blew the whistle on Procter & Gamble's interference with a research study of its osteoporosis drug*

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A recent study by Dr. Aaron Kesselheim and colleagues showed that "compulsion to do the right thing and not money is the primary motivation when drug company employees report fraudulent activity to the government."<sup>2</sup> Interviewing 26 whistleblowers associated with 17 separate cases of pharmaceutical whistleblowing since 2001, the study concluded that the potential of a multimillion-dollar settlement played a minor role in their decision-making and, in retrospect, was not often worth the personal costs whistleblowers suffered. Instead, "they seemed to want to right a wrong, or bring to light something that was ethically compromised," said Dr. Kesselheim.<sup>3</sup>

One thing is for certain. With truth on their side, individuals *can* make a difference. Whistleblowers are the Achilles' heel of organizational misconduct, provided they bear witness when it counts. Used astutely, 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 their goals of economic or political power above the public interest.

## **Whistleblowers at Their Best**

At their best, whistleblowers embody the professional integrity of true public citizens. Through their actions they add conscience and integrity to our concept of citizenship. 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.

Consider the following handful of examples drawn from GAP's experience representing whistleblowers. Our clients have:

- sparked the removal of the painkiller Vioxx found to cause some 50,000 fatal heart attacks, as well as obtained stronger consumer safety enforcement for other prescription drugs,<sup>4</sup> including Crestor (for lowering cholesterol),<sup>5</sup> Meridia (for weight loss), Bextra (for pain relief), Accutane (for acne), Serevent (for asthma),<sup>6</sup> Ketek (for sinusitis, bronchitis, and pneumonia),<sup>7</sup> Actonel (an osteoporosis drug),<sup>8</sup> ProHeart 6 (a dog medication),<sup>9</sup> and Prevnar (an infant vaccine);<sup>10</sup>
- exposed and stopped both a former oil industry lobbyist appointed to head the White House Council on Environmental Quality censoring government reports on climate change, and agency gag orders restricting the communication of critical climate change research findings with the public;<sup>11</sup>
- helped convince the House of Representatives initially to vote against legal immunity for major telecommunications companies after disclosing that a major telecom's "Quantico Circuit" provided an unknown third party with unfettered access to every mobile communication over its network, including phone conversations, e-mails, and Internet use;<sup>12</sup>
- forced the cancellation of an already-approved and nearly complete nuclear power plant because its construction was compromised by falsification of X-rays on safety welds, uninspected safety systems, and shoddy materials such as automobile junkyard metal substituted for nuclear grade steel;<sup>13</sup>
- exposed systematic illegality and forced a new cleanup after the Three Mile Island nuclear incident by revealing utility company plans to remove a reactor vessel head using a crane whose brakes and electrical system were destroyed in the accident (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 delayed its operation for 18 months until the crane was repaired and tested);<sup>14</sup>

- released data about possible public exposure to radiation around the Hanford, Washington, nuclear waste reservation, where Department of Energy (DOE) contractors failed to account for 440 billion gallons of radioactive waste;<sup>15</sup>
- shut down the manufacturing division of a multinational corporation that had cornered the market on devices that test the accuracy of precision calibration tools after exposing that test results were random (averting tragedies arising from defective goods such as heart valves, computer equipment, automobiles, and airplanes—a product where precise conformance to design specifications means the difference between success and failure);<sup>16</sup>
- provided evidence that led to the closure of two incinerators and the cancellation of three others after it was shown that the operating ones had dumped toxic substances such as dioxin, arsenic, chromium, mercury, and other heavy metals into the environment of five states and in some instances next to churches and schoolyards;<sup>17</sup>
- sparked public backlashes that three times forced the government to abandon its plans to replace its meat inspections with a corporate “honor system”;<sup>18</sup>
- reduced from four days to two hours the amount of time racially profiled minority women going through US customs could be stopped on suspicion of drug smuggling, strip-searched, and held incommunicado for hospital laboratory tests without access to a lawyer or even permission to contact family and in the absence of any evidence that they had engaged in wrongdoing;<sup>19</sup>
- exposed Transportation Security Administration orders to cancel Federal Air Marshal coverage for the highest-risk, cross-country airplane flights during the middle of a subsequently confirmed

post-9/11, larger-scale terrorist hijacking alert, orders that were rescinded after congressional protests following the disclosure;<sup>20</sup>

- sparked a top-down removal of upper management at the US Department of Justice (DOJ) after revealing systematic corruption in the DOJ's program to train police forces of other nations to investigate and prosecute government corruption;<sup>21</sup>
- exposed failure by US Marine Corps procurement officials to deliver mine-resistant vehicles and nonlethal crowd dispersers that caused Iraqi civilian and one-third of American combat deaths and injuries, before the whistleblowing disclosure led to delivery of the lifesaving equipment.<sup>22</sup>

## Reality Check for the Aspiring Whistleblower

Nothing is more powerful than the truth. But few paths are more treacherous than the one that challenges an abuse of power. Time and time again, GAP has seen whistleblowers pay an enormous professional and personal price for their actions. Because we want you to be prepared, we will not mince words in describing the risks of your decision.

One person against a corporation is not a fair fight. In terms of raw power, the corporation holds all the cards. It enjoys a presumption of legitimacy and legal authority vis-à-vis its employees. It boasts extraordinary resources and connections with politicians, the media, industry, and the larger community. It defines the workplace and its rules and regulations within the law. It bears primary responsibility for holding itself accountable. We will discuss how to even the odds by turning information into power and using the law; but in conventional terms, the deck will be stacked against you no matter how solid your evidence or astute your strategy.

When company employees go public with tales of malfeasance, the focus often turns quickly to whether there was a reprisal or justified corporate response. No matter how irrelevant, this often focuses attention on the whistleblower's personality and work record instead of the issues that prompted the whistleblowing. Rather than face the problems brought to light, managers often blame the "disgruntled employee," who is portrayed as vengeful, imbalanced, or self-serving.

### ***Shooting the Messenger***

You will surely suffer some level of harassment or retribution for blowing the whistle because bureaucracies instinctively tend to eliminate anything perceived as a threat. Academic studies confirm that more than 90 percent of whistleblowers report subsequent retaliation.<sup>23</sup> You may not believe that 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, the antidote to bad news is secrecy enforced by repression to cover up misconduct, avoid costly delays and litigation, and protect the short-term bottom line.

Not all of these repercussions are immediately obvious. For every outspoken critic who is immediately terminated, a number of others are simply transferred to a cubicle with no further job responsibilities. Some people face such direct harassment from their chain of command that they finally quit. Others are given lateral transfers to isolated or unpopular field offices. Still others face no immediate consequences but find over the years that they are repeatedly passed over for promotions in favor of less dedicated employees who have not been branded troublemakers.

Above all, being a whistleblower is lonely and stressful. You may not be a welcome member of your professional community anymore. Without acting directly, supervisors who once valued your contributions may transfer you to less interesting projects or slowly remove your responsibilities. Co-workers may shun you out of fear, while others are reduced to whispering their admiration in the bathroom. Professor Alford targets this isolation as more emotionally painful than tangible retaliation. "What bothers whistleblowers the most [is] not that the boss retaliated—this at least was understandable: he or she had interests to protect—but that colleagues they thought were friends, colleagues with whom some whistleblowers had spent more time than their families, refused to recognize the whistleblower."<sup>24</sup>

### ***The Personal Price***

Work pressure puts additional tension on personal relationships. You may be on a lot shorter fuse at home, while your family may have a difficult time understanding and sympathizing with what you are going through. It is not uncommon for marriages and other relationships to fall

apart in the wake of whistleblowing. These dynamics can lead to stress-related health problems such as ulcers, headaches, anxiety, fatigue, and alcoholism.

In perhaps the most comprehensive survey of whistleblowers in the academic literature, authors Joyce Rothschild and Terance D. Miethe reported the following:

As a consequence of their whistleblowing experience, the majority of the whistle-blowers in our sample suffered intensely. The most common fallout from their whistleblowing involved: (a) severe depression or anxiety (84 percent), (b) feelings of isolation or powerlessness (84 percent), (c) distrust of others (78 percent), (d) declining physical health (69 percent), (e) severe financial decline (66 percent), and (f) problems with family relations (53 percent). Repeatedly, respondents mentioned that whistleblowing undermined their trust in others. These numbers are extremely high; however, the numbers cannot convey the emotional distress that we heard from so many of our respondents.<sup>25</sup>

As important as recognizing the *extent* of the likely consequences of blowing the whistle is understanding *how long* it may take to make a difference—and how long you may pay a price for your actions. If your goal is to have an impact, it may require a marathon commitment to follow through on your charges and cost you hundreds of thousands of dollars in legal fees, lost wages, and other expenses. A retaliation lawsuit commonly takes two to three years and may last more than a decade for a complex, controversial case. The proceedings will drag out with investigations and lawsuits for years after the scandal, requiring you to relive the dispute in depositions and interviews. And you will learn that it is very difficult to stop midstream.

Even if your retaliation claims are vindicated and you are reinstated or compensated, the troubles do not end there. As a matter of law, it is often beyond a court's authority to address the underlying charges that gave rise to retaliation. Furthermore, long after the public has forgotten your courageous actions, your superiors will remember what you did to them and continue to view you as a threat. While managers come and go, a corporation has institutional memory. Admiral Hyman Rickover, founder of the nuclear navy, wisely observed that if you have to choose between sinning against God or the bureaucracy, pick God. That is because neither will ever forget, but only God will forgive. On occasion

a third or even fourth generation of managers may continue the harassment campaign against a whistleblower—long after the original target of the dissent has left.

Sometimes it is better to have looked the other way than to have blown the whistle unsuccessfully or given up too soon. That is why GAP scrutinizes both merits and motivations before accepting whistleblower clients. We examine the availability of concrete evidence, timing, the whistleblower's commitment and vulnerabilities, and countless other factors affecting prospects for success. Sometimes we turn down whistleblowers seeking our representation because they are likely to face an adverse ruling that will make an example out of them, further embolden the employer, and intensify a pattern of institutional repression. After blowing the whistle, you can make a negative difference by quitting in the middle or by losing. The bureaucracy will have weathered the challenge to misconduct and be stronger in the aftermath.

Whistleblowers are in the news these days, held up as role models. In movies and magazines, the media glorifies those who risk everything to expose corruption, greed, and illegal activity. But for those who think that blowing the whistle is glamorous or a path to recognition, think again. The majority of whistleblowers suffer in obscurity, frustrated by burned career bridges and vindication they were never able to obtain. The prominent, lionized beacons of hope are the rare exception, and even most of them pay a horrible price with lifelong scars.

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