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10-2014

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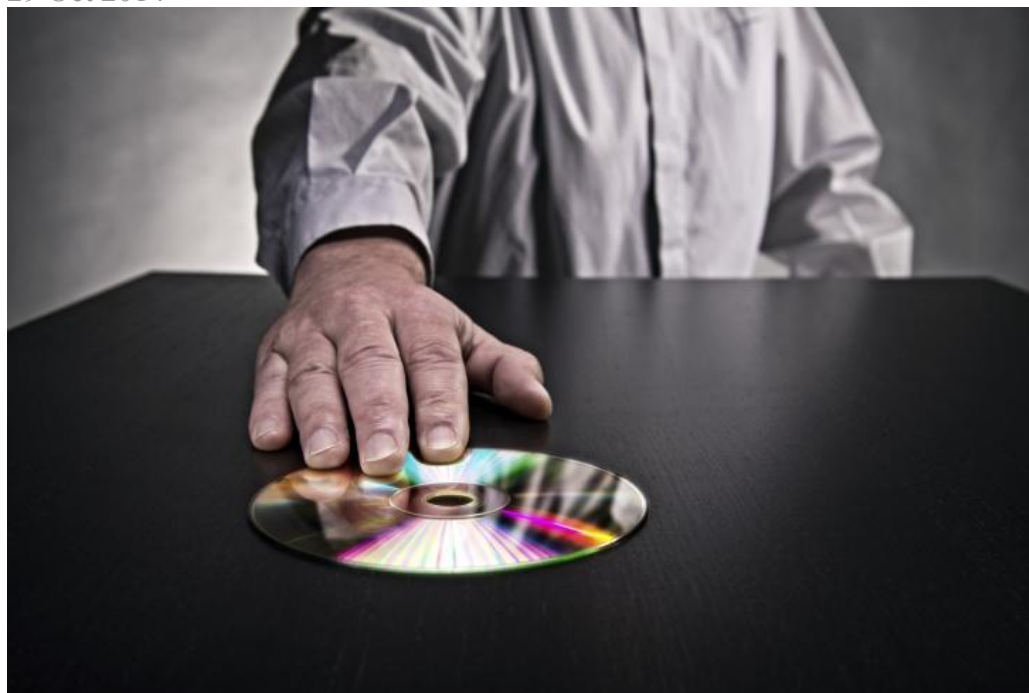
Singapore Management University. Blowing the whistle on whistleblowing. (2014).

Available at: <https://ink.library.smu.edu.sg/pers/113>

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# Blowing the whistle on whistleblowing

Published:  
29 Oct 2014



*Whistleblowing has emerged as an important way to uncover wrongdoing by those in power, but beware of breaking the law*

From Edward Snowden to Bradley Manning (later Chelsea Manning), whistleblowing has become something of a buzzword. In the case of the former, it has led to a life in exile while the other is in prison on a 35-year sentence.

Whistleblowing is not a new phenomenon. Former CIA director Mark Felt aka “Deep Throat” leaked information to Washington Post journalists Carl Bernstein and Bob Woodward that led to the Watergate scandal. Less well-known is Joseph Wilson, the diplomat who discredited the U.S. government’s reasons for going to war in Iraq, and whose story had been made into the Hollywood movie, *Fair Game*.

The [International Handbook On Whistleblowing Research](#) describes the rise to prominence of whistleblowing:

*“In the modern age of institutions, whistleblowing is now established as one of the most important processes – if not the single most important process – by which governments and corporations are kept accountable to the societies they are meant to serve.”*

“What that paragraph means,” explains **Melissa de Zwart**, Associate Professor at the Adelaide Law School, University of Adelaide, “is that governments and organisations cannot be expected to be regulated only by external forces. They cannot be expected to comply with legal and ethical principles in the absence of an internal accountability mechanism.”

## Whistleblowing and the internet

Whereas once whistleblowing could only be done through mainstream media – as was the case in the Watergate scandal – the internet has made it much easier to publicise wrongdoing.

“Whistleblowing is not new, but it has become more important in the internet context because we’ve seen a shift in power dynamics of institutions,” says de Zwart. “The internet has become a network of surveillance in and of itself. Whistleblowing has become more important in that context as a means to redress the power imbalance that has traditionally favoured big institutions.”

However, whistleblowing also happens to be illegal in most cases, and often constitutes a breach of employment terms. Do whistleblowers have a case of doing so in the name of public interest? “Under Australian law,” says de Zwart of what constitutes “disclosable conduct” that whistleblowers can disclose under protection of the Public Interest Act, “it must contravene: Commonwealth or state law; involves corruption; maladministration; abuse of public trust; wastage of public property or money; danger to health or safety; or danger to the environment. It can’t just be a law or policy that a person disagrees with.”

***"Whistleblowing has become more important in that context as a means to redress the power imbalance that has traditionally favoured big institutions."***

She adds, “This wouldn’t apply in the case of Snowden were it to happen in Australia because the U.S. have essentially found that the conduct that the National Security Agency (NSA) was engaged in was lawful under U. S. law. It was, therefore, only merely Snowden’s own interpretation of the law that it is wrong.”

## **Whistleblowing and the media**

In the case of Snowden, he was not protected under the First Amendment of the U.S. Constitution, unlike Bernstein and Woodward during Watergate. For media organisations that might receive information from potential whistleblowers, what should they do when a potential story is in the offing? “It would depend on in what jurisdiction you’re located,” says de Zwart. “In Australia, for example, we don’t have rights of freedom of speech like the U.S. does. The question is: What laws are there to protect the journalist?”

That is an important question given that the definition of a whistleblower is someone who a. must be an organisation insider; b. reveal wrongdoing within the organisation to someone else (often a journalist); and c. with the intention that action should be taken to address it.

Suppose a whistleblower fits the description, as Manning and Snowden did, it boils down to whether the chosen media organisation(s) will do something with the leaked information.

“The journalist or media organisation has to be chosen very carefully to ensure that something is done. Snowden carefully chose journalists whom he thought would be able and prepared to treat the information in a way that would have some impact. Snowden was on a \$200,000-plus contract and living in Hawaii. He gave up that job to go live in Russia with very little likelihood of being able to return to the U.S. without being put in front of a grand jury and stuck in prison.

“If you’re going to put your life in jeopardy like this, you’ll think very carefully about the journalist to whom you’ll provide the information. Snowden’s biggest fear was that, after doing all this, nothing would happen.”

Given the resulting legal and political fallout, one might say Snowden has achieved what he wanted. In an interview to the British newspaper, The Guardian, he had this to say:

*“I’m overly idealistic, because I’m not sure that political reform is going to be the thing that really protects our rights in the future on the issue of digital communications. I’m not sure there’s appetite in government to enshrine those protections. I think technical systems can fill that gap to a large extent, because we can encode our systems and values into the protocols that we use to protect [our] relations.*

*“It’s likely to end up in the Supreme Court ... and in Europe. Impending court decisions are, in my estimation, likely to introduce additional pressures on to legislators to pass meaningful reform.”*

In other words, he stands his ground that he has done the right thing in being a whistleblower. If that results in a life in exile, then so be it.