



‘Crisis of Conscience’ Explores Whistleblowing in Government and Corporate America

Aileen Torres-Bennett and Anna Gawel

October 31, 2019

A single whistleblower may do more to bring down Donald Trump’s presidency than several years’ worth of exhaustive, damning reports documenting Russian interference in the 2016 election and possible obstruction of justice by the president to cover up those efforts.

The whistleblower, reportedly a CIA officer, exposed an alleged quid pro quo in which the president pressed the Ukrainian government to dig up dirt on his political opponent Joe Biden — a revelation that has triggered a House impeachment inquiry against Trump.

The president has responded in his characteristic defiant fashion, dismissing the allegations as a deep state witch hunt and denouncing the whistleblower as “close to a spy,” suggesting the person committed an act of treason.

But, far from treasonous, whistleblowers are often seen as heroic for standing up for their beliefs and exposing wrongdoing, in both the political and corporate spheres, and are considered essential to a healthy democracy that holds institutions to account. At the same time, they often face severe persecution and an uphill battle to have their voices heard.

“There’s a whole psychology to this, and so when people do these things, they honestly believe that they’re doing the right thing for a number of reasons,” said Marianne Jennings, a professor at Arizona State University who spoke at an October panel hosted at the D.C.-based Cato Institute and centered around journalist Tom Mueller’s new book, “Crisis of Conscience: Whistleblowing in an Age of Fraud.”

Irvin McCullough, a national security analyst at the Government Accountability Project, and moderator Patrick Eddington, a research fellow at Cato, joined Mueller and Jennings to discuss the psychology of whistleblowers and some examples, including the intelligence official who blew the whistle on Trump purportedly holding military assistance to Ukraine hostage until President Volodymyr Zelensky investigated a company linked to Biden’s son Hunter.

The Ukraine whistleblower is just the latest in a long line of whistleblowers who have altered the course of history, from Daniel Ellsberg, who released the Pentagon Papers; to Edward Snowden, who leaked classified NSA information; to Jeffrey Wigand, who blew the lid on big tobacco; to Katharine Gun of the British intelligence service, who revealed U.S. and U.K. efforts to puff up the case for invading Iraq and whose story is now being portrayed by Keira Knightley in the movie “Official Secrets.”



From left, Patrick Eddington of the Cato Institute, Marianne Jennings of Arizona State University, Irvin McCullough of the Government Accountability Project and journalist Tom Mueller discuss Mueller's new book, "Crisis of Conscience: Whistleblowing in an Age of Fraud."

The Psychology of Speaking Up

Mueller interviewed over 200 people and spent seven years working on his second book, "Crisis of Conscience." Interestingly, his first book was about olive oil. Despite the seemingly unrelated subject matter, "Extra Virginity: The Sublime and Scandalous World of Olive Oil" documented brazen fraud in the olive oil industry.

"The common denominator is fraud.... The olive oil story was a story about people — good guys, bad guys, mafia people and truly saintly individuals. Whistleblowing is like that too," Mueller said at the Cato discussion, adding that whistleblowing has a "remarkable cast of characters in a wide range of different industries."

Mueller argued that the bigger an organization becomes, the more susceptible it is to fraud. "If you go beyond a certain size, the direct sense of responsibility and involvement that what I am doing produces those results is lost," he said. "You have a chain of command. You have a chain of responsibility. You have a series of activities that are more and more disassociated with the ultimate goal."

Jennings, who wrote "The Seven Signs of Ethical Collapse" in 2006, sees this disconnect in large corporations, where a tiny lie can snowball into a gaping moral abyss.

"People don't wake up one day and say, 'I'm going to commit fraud to get this account.' It's a series of seemingly inconsequential acts. They all have a story of their initial trap," she said.

For example, a CEO in a meeting might tell employees that an issue is not really a problem or that it's already been handled. "Every single person in that room who knows [that's a lie] says nothing. From that point on, they become prisoners of each other," Jennings said.

"It's not the kind of thing that gets splashed on newspapers, but it is the start. They know something about the CEO. Likewise, the CEO knows of their unwillingness to stop them. It just

keeps growing because they push the envelope to see how far they can get you to go along with it.”

Jennings added that some CEOs, even those from humble beginnings, can take on “an air of royalty and no one even calls them out on something as simple as their travel expenses.”

She said people also use psychological tools to justify their actions — or rather lack thereof — telling themselves that “everybody does it, this is the way it’s always been done, if we don’t do this, this is what happens to the company.”

Then, when a whistleblower does come forward, they are often ignored or attacked because they’ve upset a system everyone has come to accept as normal, Jennings said. In other words, the whistleblower is the one who broke the rules, not the other way around.

“ [It’s] very important not to try to elevate the whistleblower to the hero or the demon. Organizations of every kind have potential for drifting to the dark side. ”

TOM MUELLER, author of *Crisis of Conscience: Whistleblowing in an Age of Fraud*



PHOTO: GUYE YODER / PENGUIN-RANDOM HOUSE

Mueller said that whistleblowers are often loners who don’t follow the herd and whose exceptionalism should not only be celebrated, but also emulated. “I think that almost Orwellian shift that we’re going to call a truth-teller and a person of conscience a special thing, as if all of us can’t aspire to that, that grabbed me in a way,” he said, arguing that more people should feel the moral imperative to speak up, despite the consequences.

Given that whistleblowers often face isolation and potentially career-ending retribution, Jennings asked, “Why do they do such bizarre things?”

The most obvious answer is there simply comes a point when at least one person feels compelled to break an organization’s culture of silence and loyalty. “They are accountable to something more than just keeping this job,” Jennings said, citing a sense of loyalty to one’s values, for example.

Mueller said that in writing his book, “the phrase I heard countless times is, ‘I have to look at myself in the mirror every morning.’ And that is a very powerful thing, and clearly they spent a lot of time getting to that point saying, ‘I don’t have a choice. The choice has already been made.’”

He added that many people he spoke with hated the term “whistleblower,” insisting that they were just doing their jobs.

But beyond a sense of duty, there is more than one reason why someone becomes a whistleblower, according to Jennings.

The quintessential type of whistleblower is someone who feels a moral obligation to say something because they believe “this just isn’t right and I can’t live with that,” Jennings said. “So those are the true whistleblowers.

Another type is someone who seeks revenge on a person or organization. Some whistleblowers point out alleged wrongdoing for a living, raising issues in pursuit of winning legal settlements — and money — while others ride in on a high horse, determined to stop any and all injustices.

Regardless of motive, Mueller argues that it's "very important not to try to elevate the whistleblower to the hero or the demon. Organizations of every kind have potential for drifting to the dark side."

What an investigation should focus on is whether or not a whistleblower has good facts. "That's the most important thing," according to Mueller. "Drifting toward the mentality of the whistleblower, their motivations, that's a distraction from the misconduct that they're reporting."

Prominent Cases

Mueller recounted the story of Allen Jones, an investigator at the Pennsylvania State Office of the Inspector General. One day, Jones found that a Pennsylvania state pharmacist received a \$2,000 check in an account that was not officially registered, which is a felony offense in Pennsylvania. The check was signed by a subsidiary of Johnson & Johnson.

Suspicious, Jones started looking into why a big pharmaceutical company was giving this money. He concluded that Johnson & Johnson was corrupting state health officials to make sure its anti-psychotic medication, Risperdal, was being prescribed for illnesses for which it wasn't originally intended. These prescriptions were ineffective, at the least, or extremely harmful, at the worst.

When Jones spoke up, his inspector general did not support his investigation. At the time, Pennsylvania Gov. Tom Ridge was decidedly pro-business and against fraud investigations, according to Mueller, who said that, in general, active files were being destroyed under Ridge's watch.

Jones ended up getting fired, and he eventually found a lawyer in the Texas Attorney General's Office to take his case. The Department of Justice helped to go through millions of pages of documents that showed evidence supporting Jones's allegation.

In October 2019, a jury verdict ordered Johnson & Johnson to pay \$8 billion in a Risperdal lawsuit. Mueller pointed out that the company had made \$25 billion from the sales of the drug.

"And that was a success story," Mueller lamented. "Sounds like the cost of doing business to me. So, we have a major problem."

Another case Mueller discusses in his book involves Elin Baklid-Kunz, who worked in compliance at the nonprofit Halifax Hospital in Daytona Beach, Fla. She blew the whistle on what she saw as overbilling and unnecessary surgeries and went to court. Halifax ended up agreeing to pay \$85 million in 2014 to resolve the allegations.

But long before then, Mueller pointed out that Baklid-Kunz had done everything in her power to work within the system, believing it would correct itself.

"At the end of the day, she did everything she could not to blow the whistle. She believed wholeheartedly in her organization and she was convinced if she could just find a way of expressing the problems she was seeing to the right people in the right way, they'd say, 'Oh, you're right. We need to fix this.' That moment never came," Mueller said.

Jennings said that Baklid-Kunz had exhausted all of her options and come upon what she calls “the hill you die on. There is a time when you have to face that you cannot change this organization. It can only be changed from the outside.”

A third whistleblowing example that Mueller brought up is the case of Franz Gayl, the former Marine Corps science adviser who spoke up when he noticed delays in delivering Mine Resistant Ambush Protected vehicles (MRAPs) to Iraq and Afghanistan. From 2003 to early 2008, over 60 percent of all U.S. troop deaths in Iraq were the result of homemade roadside bombs. People had been clamoring for an alternative to the lightly armored Humvees that were failing to protect soldiers against these bombs.

“People had been filing urgent requests for a better product and that better product was already out there, which was the MRAP,” Mueller said. The problem was that these costly MRAPs could potentially undercut lucrative defense contractor programs to develop lighter vehicles for the future.

Despite bureaucratic resistance, Gayl succeeded in speeding up the delivery of better-armored vehicles. As a result, combat casualties and deaths dropped by over 90 percent, according to the Government Accountability Project, which represented Gayl legally. But Gayl paid a high price for blowing the whistle. There were numerous retaliatory actions against him, including revoking his security clearances, although his persistence saved lives.

“Gayl was able to get the word out, but his life became more complicated,” said Mueller. “But he’s gainfully employed again. That’s a success story. The unnecessary dying stopped.”

About 70 percent of military-service whistleblowers experience retaliation, McCullough of the Government Accountability Project said. “Service members have second-class rights to protect themselves from retaliation. That’s mind-boggling to me because these are the folks with the most important disclosures.”

Mueller said that whistleblowers often deal with some type of blowback, whether it’s being blackballed in their industry or becoming the target of criminal investigations themselves. But in recent years they’ve faced additional barriers because of trends such as the outsourcing of public services to private, for-profit entities and “a widening cult of secrecy, often imposed by attorneys and nondisclosure agreements, that conceals an organization from public view and leaves whistleblowers as the last line of defense against fraud,” he wrote in an Oct. 7 op-ed for The Washington Post.

“Meanwhile, elite institutions have become more suspicious of truth-tellers. Immediately after 9/11, many government agencies dramatically limited access to public information,” he added.

Mueller noted that the Obama administration significantly clamped down on whistleblowers after the WikiLeaks disclosure, treating lawful disclosures by public employees as criminal acts.

“Most disheartening of all, facts, the hard currency of truth-telling, are being debased in Trump’s post-fact world, a move that can mute the most piercing whistle,” he wrote.

Jennings said she is also disheartened by what she sees as the widespread erosion of ethical standards.

“Fundamentally, we have shifted as a society, and the data certainly indicate this, in terms of right and wrong,” she said. “We don’t have those lines any more that say, no, this is fraud ... and this is dangerous.”

The Trump Impeachment

Since the start of his presidency, Trump has been dogged by allegations that he colluded with Russia to rig the 2016 election. Former special counsel Robert Mueller’s investigation did not find sufficient evidence to prove collusion, although it left open the question of whether the president tried to obstruct justice, with the evidence presented in a report but the verdict left up to Congress.

There had been a groundswell of Democrats in Congress wanting to start the process to impeach the president, but House Speaker Nancy Pelosi resisted those calls until a whistleblower wrote a bombshell memo about a July 25 call Trump made with newly elected Ukrainian President Volodymyr Zelensky in which Trump tried to “persuade Ukrainian authorities to investigate his political rivals, chiefly former Vice President Biden and his son, Hunter,” according to the whistleblower memo.

Trump is accused of withholding \$400 million in security assistance to Ukraine and a visit to the White House until Zelensky’s government cooperated with him in his offensive against Biden. On Sept. 24, Pelosi launched a formal impeachment inquiry to uncover whether Trump used the office of the presidency to benefit himself politically. The next day, the White House released a partial transcript of the call that suggests the president linked delivering badly needed military aid to “a favor” that involved investigating Hunter Biden, who served on the board of a Ukrainian energy company, and looking into a conspiracy theory about Ukrainian meddling in the 2016 election.

The transcript seems to confirm the whistleblower’s assertion that the president urged “a foreign power to investigate a U.S. person for the purposes of advancing his own re-election bid in 2020.”

“This nine-page memo was written by a person who in my estimation is an extremely careful and meticulous individual,” Eddington of the Cato Institute said. “The level of detail in this memo itself, even without the classified attachments, is rather remarkable.”

McCullough, who disclosed that his father is on the legal team of the whistleblower, said the fact that the intelligence community inspector general — a Trump appointee — found the memo credible is itself “a pretty high bar.”

Trump, however, has lambasted the whistleblower as a “deep state operative” with no firsthand knowledge of the phone call.

Jennings, who joked that she was the “token Trump supporter on this panel,” agreed that the fact that the whistleblower was not present for the phone call is significant.

“If you want to bring down a president, let’s make sure we have the evidence and that’s why firsthand information is a standard for trial.”

Likewise, Eddington warned that impeachment “is not a typical trial. That’s what makes this very, very different. When we talk about standards of evidence, in an impeachment

circumstance, the standard is so-called high crimes and misdemeanors, and that can be construed rather broadly.”

But evidence has been mounting to bolster the Democrats’ case. That includes testimony by former U.S. envoys showing that the president’s personal lawyer, Rudy Giuliani, ran a shadow campaign to dig up dirt on Biden. In addition, a second whistleblower who claims to have firsthand knowledge of the July 25 call has emerged, with the possibility that more officials will come forward as investigators interview more people.

“I think when one whistleblower goes to a government investigator and that government investigator starts talking to others, lots of people become whistleblowers, and it does drive this group mentality toward justice,” McCullough said.

But Jennings questioned whether this group mentality is being driven by justice or political bias.

Mueller countered that regardless of the whistleblowers’ politics, the telephone transcript and subsequent congressional testimony have corroborated much of the initial allegations.

Eddington concluded that given how high the stakes are, politics needs to be put aside and the focus should be on the facts. “It would be fair to say that on most issues I don’t agree with this president, but I also believe that at the end of the day, like anybody else, he is entitled to get a fair hearing.”