

FREEDOM OF EXPRESSION AT WORK

Mick Andersen, journalist

I am excited to be here to learn more on how we can work together, in the United States and elsewhere, to expand the frontiers of the practice of public virtue and the protection of individual freedom. The issue of transparency and integrity in government is a particularly exciting one, as it explores the intersection of the work done by whistleblowers and journalists, in the name of freedom of expression and governmental transparency. This Paper is based in large part on my own experience and perspective both as a journalist and as a whistleblower in my own country.

Usually, when I make a presentation as a national security whistleblower I begin, "My name is Mick Andersen and I am a whistleblower." I then go on to explain that, if that phraseology sounds a little like an introduction at an Alcoholics Anonymous meeting, it's no accident. That is because we, like the recovering alcoholic, often find our lives in shambles after a long period of public and private agony. Unfortunately for those of us who are whistleblowers, little about us usually remains anonymous as we try to put the pieces back together. Yet, the experience of whistleblowers from the United States is somewhat different from those of other countries for two important reasons. One reason is that we have a body of laws and regulations that, albeit very imperfectly, offer us some protection, at least in the medium and long-term. The other is that in recent years one is hard pressed to come up with the name of an American whistleblower that has been the object of real or suspected foul play. As we know, that is not the case in some other countries, where whistleblower martyrdom is a physical and not just a professional construct.

In the United States whistleblowers do often face professional obliteration. Part of the reason for this is cultural. As my colleague at Government Accountability Project (GAP), Tom Devine, has pointed out:

It means making a choice between conflicting social values. Our society honors "team players" and doesn't like cynical troublemakers and naysayers. But we also admire rugged individualists and have contempt for bureaucratic "sheep." We look down on busybodies, squealers and tattletales. But we condemn just as strongly those who "don't want to get involved," claim to "see nothing" or look the other way. And while we believe in the right to privacy, we simultaneously fight for the public's right to know.

Those values wreak havoc on whistleblowers as they are forced to make decisions that can cost them their careers, their reputations, and even their families. A little over a year ago, when my own case dragged on endlessly despite repeated confirmation of the information I had turned over to the authorities, I went several days without being able to sleep. On the fourth day, I found myself staring at the ceiling in my bedroom at 4:30 in the morning and knew that if I did not get up and start writing, maybe I wouldn't want to get up at all. Five hours later, I produced an essay called "The Zen of Whistleblowing."

I'd like to quote for you just two passages from a work that—while it leaves some readers indifferent—has received overwhelmingly solid endorsements from other whistleblowers who have read it. The first passage talks about being in a sort of professional purgatory, from which escape is uncertain. I wrote:

I've always wanted to be somebody, but I guess I should have been more specific ... Integrity—what should be a minimum requisite for public service—has become instead your specific, and perhaps only real, memorable contribution to the workplace. Forget your years of professional preparation for greater challenges and greater recognition; forget the sacrifices you and your parents have made to get where you are, and forget your fondest dreams of

advancement. The bottom line is that when you look around, your career is stalled, and you feel alone.

Professor C. Fred Alford, whose very fine book, *Whistleblowers: Broken Lives and Organization Power*, was just released in the United States, talks about whistleblowing as being about the possibility of trading off one dread for another. "To remain within the system is to risk the dread of becoming dead to oneself," he wrote. "To step outside the system is to risk the dread of becoming dead to others." In his own work, Alford cited the second passage from "The Zen of Whistleblowing" that I would like to bring to your attention:

And those "friends" you've made, or thought you've made, at work over the years, during countless team projects, holiday parties, office birthdays, etc.? People you've laughed with, shared photos of your kids, and their latest love interest, and maybe even traveled with as part of your office's mission? The people about whom your spouse or significant other may have been jealous, because you spend more time with them during the day than you do with your loved one(s) nights and weekends. (And your nights and weekends end up being colored by what happened with "these people" during that long workweek.) Now, Whistleblower, you find you might as well have painted yourself green, stood on top of your desk, and shouted to your workmates that you're a closet Martian. Some will look away in embarrassment. Others will tell you to stop complaining and get back to "work." And still others will elbow your peers in a knowing sort of way and aver that they always knew that there was something just a tad bit touched about you.

I was a whistleblower at then-Attorney General Janet Reno's Department of Justice, where I worked as a senior advisor for policy planning for the Criminal Division's international training programs. Previously I had worked as a special correspondent for *Newsweek* and the *Washington Post* in South America, as Program Director for Latin America and the Caribbean for Vice President Walter Mondale's National Democratic Institute for International Affairs, and as senior staff at the Senate Foreign Relations Committee. I might also mention that in 1999, as a free-lance reporter, I broke a story about a \$25 million congressional bribery scandal in Argentina concerning international patent rights.

However, it was my disclosures in 1999 that sparked a three-year criminal investigation by the Department's Inspector General. My disclosures concerned leaks of highly classified information to people seeking the documents for their own personal purposes; sexual harassment and sexual favoritism in hiring; dubious contracts to friends of General Reno; serious violations of travel rules, and a broad pattern of waste and mismanagement.

When the IG's report was released last year, it found that the person Miss Reno had appointed in 1997 to "clean up" the Immigration and Naturalization Service—Mr. Robert Bratt—had, at the time, secured two highly questionable visas for Russian women, one of whom he was allegedly sleeping with. Incredibly, as the scandal began to be investigated by the Justice Department's internal security office, Mr. Bratt was chosen by Miss Reno to "fix" the Immigration and Naturalization Service. (It is useful to note that, simultaneously, the State Department's Office of Diplomatic Security was embarked on its largest-ever investigation into the trafficking of Russian women into the United States.) Bratt also paved the way for a waitress at a local bar in the nation's capital to get a well-paid professional job at the Department. As one Justice Department official later remarked to a reporter, "Wasn't there any adult supervision of these programs?"

The DOJ Inspector General's opinion on the goings-on in the Criminal Division was even more devastating, and was synthesized in a 414-page official report. Acting Inspector General Glenn Fine lambasted top officials in the department's international law-enforcement programs for "serious, substantial and egregious misconduct."

The report found that Bratt had put his “own interests ahead of the interests of the government,” and it described him as “recklessly indifferent to the security of the government.”

The report cited multiple instances of serious security breaches involving pervasive mishandling of highly classified law-enforcement and intelligence documents. The IG's office also confirmed the sharing of secrets with contractors who had not undergone any background checks, as well as sexual favoritism in the hiring and promotion of some employees and contractors. In addition, it detailed substantial cost overruns and violations of Justice travel rules by Bratt—who had been the head of the international programs until 1997—and his subordinates. As a result, there was a top-down management housecleaning. One of those forced out of his old position was the top Justice official who advised Ms. Reno on the selection of independent counsels to investigate the Clintons and then-Vice President Gore.

Given the later results of this investigation a reasonable person might believe that the person who was responsible for getting the investigative ball rolling might have been rewarded for his services or, at least, left alone. Instead, I had my security clearance “disappear”, I was stripped of my work duties and was sent to a room in the Division's administrative offices, where I was given virtually nothing to do for a month, the same period of time I was supposed to be receiving a performance evaluation. To give you an idea of how ridiculous things became, the room in which I was warehoused was being used to store “burn boxes” full of classified and other sensitive information. I passed the time reading books about the history of the U.S. civil war and biographies of George Washington.

I should point out that, until I made my whistleblowing disclosures, I received outstanding performance evaluations and glowing letters of recommendation from my supervisors. The month before my identity as a whistleblower was revealed publicly, Vice President Gore's office had recommended me for a senior position at the Peace Corps. After my disclosures, however, I was told my services were no longer required at the Department.

Getting another job in a company town, when that company is the federal government, has not been easy. In some ways I was lucky, however. I knew enough from my days as an investigative reporter to download, photocopy or otherwise record everything I needed to in order to make sure the Department's internal investigation was kept straight. I was also able to count on the keen interest of the conservative press, in particular, the *Washington Times' Insight Magazine*, in a story that other media seemed happy not to pursue. I was also blessed by the fact that House Judiciary Committee Chairman Henry Hyde and Sen. Charles Grassley, an Iowa Republican who has made whistleblower protection a hallmark of his public service, kept up the heat, when my erstwhile Democratic Party friends were silent.

My purpose in telling my story today is not personal, one of seeking vindication or consolation, but to illustrate a larger point. If the appropriate protections are in place, it is possible to be a whistleblower and survive. Even in the United States, however, where whistleblowers have made important contributions on myriad public policy issues, there remains work to be done. At the same time, the persistence of the U.S. Congress in reaffirming and reinforcing the free speech mandate for its own right to know and that of the public is one of the most inspiring public policy examples in my own country.

It has been a struggle that has lasted more than a generation. In 1978, federal whistleblowers were provided with some important legal remedies after Congress passed the Civil Service Reform Act. However, bureaucratic managers fought these tooth and nail and in this fight found powerful if improbable ally in the recently created Office of Special Counsel, set up for the purpose of protecting whistleblowers. The office acted as counsel to senior management throughout the federal bureaucracy in their efforts to fire or punish whistleblowers without leaving fingerprints. The corresponding administrative board that adjudicated cases was a rubber stamp for reprisals. Out of the first 10,000 complaints, only four whistleblowers won on the merits. In 1989, in response to this clear violation of legislative intent, Congress unanimously passed the Whistleblower Protection Act (WPA) and, for a time it was the premier

merit system law. A strengthened version passed, again unanimously, in 1994. However, again the WPA came under challenge, this time by a series of rulings from a hostile federal circuit court of appeals whose head was one of the people who, a decade earlier, helped lead the Office of Special Counsel's secretive efforts to intensify harassment of whistleblowers.

This year a bipartisan group of senators and congressmen plan to introduce legislation that would reinforce crucial protections to whistleblowers. I have brought with me a number of articles and news clippings that give a more in-depth look into the current status of these efforts.

I have also been asked to address the issue of press freedom in Latin America and its impact on public transparency. As I mentioned, in the 1980s I worked in Lima, Peru and Buenos Aires, Argentina for *Newsweek* and the *Washington Post*. In the past four years, I have served as a senior research specialist for Latin America and the Caribbean for the U.S. human rights group Freedom House, and one of my major concerns has been press freedom.

While those who denounce waste, fraud and abuse within the government bureaucracy are more commonly identified in the public's mind as "whistleblowers," I believe that the term can be applied equally as well to investigative journalists and human rights monitors. And as an investigative reporter myself, I know that whistleblowers are indispensable, really the lifeblood of our profession, serving as the eyes and ears of efforts to uncover evidence of wrongdoing.

Obviously a free press is essential to the transparent workings of a democracy. In the United States we say that the best disinfectant is sunlight; in other words, that in order to keep the system clean and in good order it is necessary to shed light on the inner workings of government. In the context of the recently emerged democracies of the Western Hemisphere, the media have taken on a role that in some ways has come to supplant corrupted legislatures and judiciaries, at least in their role as public tribunes. In fact, their actions have frequently blurred the lines between the profession of journalism and what is commonly considered to be whistleblowing. At the beginning of the 1990s, for example, in the Mexico of Carlos Salinas de Gortari, it was a former journalist, Eduardo Valle Espinosa, at the time his country's anti-drug czar, who denounced the Salinas family connection with a notorious drug kingpin. After denouncing Mexico's government as a "narco-democracy," Valle Espinosa had to flee into exile in the United States.

I know that in the case of Argentina under President Carlos Menem, where widespread corruption in the executive branch was mirrored by similar problems in both Congress and the courts, the press often bore solitary witness to rather massive violations of the public trust. Often crucial press disclosures of wrongdoing had their origin in complaints brought to them by anonymous government workers anguished by both the corruption and/or abuse of power, and their seeming lack of recourse through the courts or legislature. Please remember that the impetus for last year's downfall of Peru's strongman president Alfredo Fujimori came after state workers funnelled compromising information, including videotapes, to the media.

I think that there were two rather obvious lessons to be learned from the experience of the 1990s concerning whistleblower issues in Latin America. First, that protections are very much needed in the many countries where civil service guarantees either do not exist or have been severely eroded by the neo-liberal economic reforms introduced by a number of governments. Secondly, there is a huge area of potential and necessary collaboration between whistleblowers and the press.

Regarding the first point, I think it is fair to say that—although market oriented reforms may have been necessary to prune back huge parasitic state enterprises, where corruption often flourished—the pendulum is swinging back in a number of countries towards a new role for the state in economic development. It seems to me, then, that part of the new and necessary compact between the business community, government and the voters needs to be the protection of potential whistleblowers that act as guarantors of public sector accountability. If

the state is to recover some of its previous social and economic influence, it is necessary for its growth to be linked to measurable, and real, checks and balances such as that offered through whistleblower protection.

Concerning the role of the press, as was the case in my own experience, and I note, in that of European Commission whistleblower Paul van Buitenen, its contribution is absolutely essential. There is that ancient question about if a tree falls in the desert and no one is there to hear it, is there sound? In the same way, if a whistleblower makes a complaint, and no one is there to "give it wings," the silence is deafening, and the potential for reprisal exponentially much greater. As von Buitenen himself noted in *Blowing the Whistle: One Man's Fight Against Fraud in the European Commission*:

Their dogged pursuit of the story ... kept attention focused on my own situation, the suspension and everything that followed it. Without the media I would have been destroyed.

In Latin America there has been increasing criticism from within the press about issues of venality and other corruptions among its members. In ancient Rome it was asked: "*Quis custodiet ipsos custodes?*" ("Who will guard the guards?") It was an appropriate question then and, I believe it is a healthy sign now, when it is being asked by many journalists about their own profession. Constant examination about the role of the press in telling truth to power gives whistleblowers and reporters an even more solid common ground for collaboration.

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