Author's Commentary on "Blowing the Whistle on a Therapeutic Experiment"

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For the purposes of this case, "whistleblower" refers to any employee who reports unethical, illegal or incompetent acts to appropriate agencies outside the employer's facility. On the basis of this definition, the decision to blow the whistle *to external authorities* is a potentially risky endeavor fraught with moral conflicts and professional and personal risks. In reflecting upon when and how to report violations, many questions arise: Will the potential benefit outweigh the possible harms? Who can be trusted? Will confidentiality be maintained so that the whistleblower is protected against retaliation? What is the likelihood that change will occur if the person goes public? Will professional associations stand behind whistleblowers when they follow through on their professional obligations to exhaust all internal mechanisms before blowing the whistle?

As Jan's situation and other whistleblowing cases demonstrate, there are no definitive answers to whether a given act results in the desired outcome until the consequences of the action can be evaluated. Hindsight is often credited with 20-20 vision, but in reality it may or may not provide the insights necessary to protect the public welfare or future whistleblowers from retaliation. I will argue that the nursing profession (and other so-called helping professions) must re-evaluate the paradigm that currently underlies the profession's goals, values and ethics. I suggest that unless the paradigm shifts to include the care giver as a recipient of the same ethic of care, then current codes of professional ethics and statutory protections for the whistleblower will fail to provide the comprehensive protection needed for professionals and the clients they serve.

Jan did deliberate on the correct ethical and legal questions and opted to act upon her professional obligations -- obligations that are grounded in the Nurse Practice Act, standards of care and the profession's code of ethics. The Code for Nurses (American Nurses' Association 1985) explicates the values and goals of the profession and provides a framework to guide the nurse's ethical deliberations and

actions. The notion that the nurse acts as a *client advocate* is a pervasive theme throughout the code and is a core element of nursing education. According to the code, nurses as client advocates act "to safeguard the client and the public when health care and safety are affected by incompetent, unethical, or illegal practices by any person." (ANA 1985, p. 6) The ANA expands on this guideline to include specific recommendations for appropriate action:

1. Express concerns about inappropriate or questionable practices to the person carrying out the practice and attention called to the detrimental effect such practices have on client welfare.
2. When factors in the health care delivery systems threaten the welfare of the client, similar action should be directed to the responsible administrative person. If indicated, the practice should then be reported to the appropriate authority within the institution, agency or larger system.
3. There should be an established process for reporting and handling of incompetent, unethical or illegal practice within the employment setting so that such reporting can go through official channels without causing fear of reprisal.
4. Written documentation of the observed practices or behaviors must be available to the appropriate authorities.
5. State nurses associations should be prepared to provide assistance and support in the development and evaluation of such processes and in reporting procedures.
6. When incompetent, unethical or illegal practice on the part of anyone concerned with the client's care is not corrected within the employment setting and continues to jeopardize the client's welfare and safety, the problem should be reported to other appropriate authorities such as practice committees of the pertinent professional organizations or the legally constituted bodies concerned with licensing of specific categories of health workers or professional practitioners. Some situations may warrant the concern and involvement of all such groups. (ANA, 1985, 6).

The code specifies that if internal mechanisms are followed and change does not occur, then the nurse may need to go outside the institution to protect the welfare and safety of clients.

Jan followed the ethical and legal guidelines of her profession. So what went wrong? The same thing that went wrong when the Thiokol engineers blew the whistle on

the Challenger explosion. The same thing that can go wrong when any professional who follows their codes of ethics. If the organization views whistleblowers as trouble makers who should be punished for violating organizational norms of silence, then no professional code of ethics is adequate to protect whistleblower from retaliation. Furthermore, even the most comprehensive legislation is inadequate to protect whistleblower from personal and professional risks if the ethical milieu of the organization does not assist and reward employees for reporting unethical or illegal behavior. Even when structural mechanisms are in place (e.g., ethics committees, misconduct committees, IRBs), the political structure and power dynamics of corrupt organizations may find a way around these safeguards.

Jan's case is an exemplar of the way altruistic professions, such as nursing, are caught in a Catch 22. Nurses are taught that it is their professional obligation to act as client advocates. An ethic of care is one of the profession's most cherished values, if not its highest moral ideal. It seems that something is fundamentally wrong when we teach students in health-related fields the value of caring for others but neglect to teach them how to care for themselves as professionals. It is a no-win situation for the client and the nurse. Within the current system, a nurse who is committed to maintaining her professional integrity within an organization that refuses to change its unethical or illegal behaviors has limited options, most of which entail high stakes for the nurse, both personally and professionally.

Lennane (1993) conducted a survey of whistleblowers from various occupations who had exposed corruption or danger to the public. All subjects (N=35) in this nonrandom sample suffered adverse consequences. For 20 of the subjects, victimization started after the first internal complaint. Retaliation took many forms including dismissal, demotion, resignation or early retirement due to illnesses associated with victimization. Twenty-nine subjects had stress-related symptoms, 15 were started on long-term treatment with medication, 17 considered suicide, 30 reported adverse effects on their children, and almost half subjects reported reductions in income of 75 percent. One could raise questions about the generalizability of these findings. However, when one reviews the literature on whistleblowers and attends to the actual stories of whistleblowers, Lennane's observations and conclusions are, more often than not, supported. Lennane concludes, "Although whistleblowing is important in protecting society, the typical organizational response, causes severe and long lasting health, financial, and personal problems for whistleblowers and their families." (Lennane 1993, 667)

Ethical decision making among professionals in health care and the scientific community is about ethical principles and scientific integrity as much as it is about politics and power. Ethical theory and professional codes of ethics will remain abstract entities unrelated to real-life situations until we acknowledge that inequities of power and status in the hierarchy of systems have a profound impact on individuals who witness misconduct and not only want to protect the public, but deserve to be protected from professional and personal retaliation.

The nursing profession is particularly vulnerable to retaliation if misconduct is reported. In a predominantly female profession, employed primarily in hospital settings where they are paid by the institution, nurses have a variety of potentially conflicting loyalties: to the patient, the physician, the institution, to society at large, and (let us not forget) to self. When unethical or illegal conduct is reported through appropriate channels and nothing is done, the nurse is forced to choose between ignoring the situation and doing nothing, or ultimately finding it necessary to hire an attorney for legal representation. How many nurses are willing to take this risk, given their economic situation? Jan ended up having to act in isolation because she could not rally any of her nursing colleagues to stand with her.

Nothing less than a paradigm shift is needed to protect the public welfare and safety, as well as the welfare and safety of nurse professionals. The preparation and

socialization of health care personnel must allow them to maintain their professional and moral integrity and also enable them to report colleagues' unethical, illegal or incompetent behavior. The public has entrusted its faith and its economic resources in health care professionals, who should be able to act in the best interests of the public without fear of retaliation.

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