Whistleblowing

By Michael Kalichman, 2001
Contributors: P.D. Magnus and Dena Plemmons

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Summary

Necessity
Because of the nature of most research environments, misconduct will only come to light if someone close to the project blows the whistle.

Obligation
"Someone who has witnessed misconduct has an unmistakable obligation to act." (NAS, 1995). While this obligation might be met by formal reporting of the alleged misconduct, this is only one of many paths that might be open to the potential whistleblower.

Consequences
Both whistleblowers and those accused of wrongdoing typically suffer whether or not the allegations are ultimately sustained.

Perspective
To avoid the mistake of an inappropriate allegation, potential whistleblowers should begin by asking questions and seeking perspective.

Questions
A whistleblower, as well as his or her case, is best served by asking questions rather than drawing conclusions.

Documentation
As with good research, the integrity of an allegation of research misconduct is best served by keeping clear, defensible records of what happened and when.

Role
It is the responsibility of the whistleblower to appropriately report or respond to possible misconduct; however it is not the whistleblower's role to further investigate the misconduct or mete out justice.

Background

The details of how research is conducted are often known only to those actually working on a project. This relative secrecy is driven by many different factors, from sheer practicality, to protection of credit or intellectual property rights, to worries about the possible misuse of preliminary data. Where there is this secrecy, however, misconduct will only come to light if someone close to the project blows the whistle.

Some well-known cases of whistleblowing include revelations by Roger Boisjoly about actions within Morton Thiokol prior to the O-ring failure believed to be the cause of the Challenger disaster in 1986 (Presidential Commission on the Space Shuttle Challenger Accident, 1986); reports by Jeffrey Wigand about knowledge of nicotine's addictive properties within the Brown and Williamson Tobacco Company (Gleick, 1996); and allegations by Robert Sprague of data fabrication by Stephen Breuning (Holden, 1987). In another case, which remained under dispute for over ten years, allegations by Margot O'Toole of misconduct by Thereza Imanishi-Kari were ultimately rejected on final appeal (Kevles, 2000).

Unfortunately, the evidence is compelling that whistleblowers, not just the accused, suffer adverse consequences. Based on self-reports, over 60% of whistleblowers suffered at least one negative consequence, such as being pressured to withdraw their allegation, being ostracized by colleagues, suffering a reduction in research support, or being threatened with a lawsuit. Approximately 10% noted significant negative consequences, such as being fired or losing support. However, fewer than 18% of those suffering the most severe impact on their careers reported that they would be unwilling to come forward with allegations again. (Research Triangle Institute, 1995) This potential for adverse consequences makes it problematic to place an obligation for whistleblowing on scientists in training, such as postdocs, graduate students, or undergraduate students.

Scientists do not all agree regarding if, when, or how to report misconduct. There is a considerable range of opinions among scientists about how to respond to perceived misconduct -- and an even greater difference between scientists and administrators (Wenger et al., 1999). Yet, as a 1995 publication of the National Academy of Sciences advises, "someone who has witnessed misconduct has an unmistakable obligation to act."

Regulations and Guidelines

To foster fair and timely responses to allegations of research misconduct, federal regulations include safeguards for informants and for the subjects of allegations, an expectation of objectivity and expertise, adherence to reasonable time limits, and respect for confidentiality.

Whistleblowers are protected under rulings from both state and federal governments. The first amendment to the Constitution, guaranteeing free speech, gives whistleblowers legal protection from retaliation. The federal False Claims Act is more

far-reaching (US Code, 1986). Originally developed to protect the federal government from fraudulent contractors during the Civil War, the Act provides that any individual with primary knowledge of fraudulent use of federal funds can bring charges. If a defendant in a False Claims case is found liable, then the whistleblower can be awarded 15-30% of the resulting settlement. The False Claims Act also specifically calls for significant remedies for any discriminatory action that can be shown to have been taken to retaliate against an employee who has presented a case under the Act.

Current federal protection for whistleblowers is covered by the Whistleblower Protection Act of 1989. In addition, new federal regulations have been proposed by the Department of Health and Human Services (2000) to protect whistleblowers from retaliation. The proposed regulations are intended to place obligations on institutions both to prevent and to remedy retaliation against whistleblowers. In addition to federal regulations, most states and/or institutions typically have specific protections for whistleblowers. Additionally, most institutions, and many professional societies and journals, offer guidelines to support the role of the whistleblower. Guidelines can have as much or more importance than the regulations in reducing the chance of adverse outcomes.

Discussion

Case Study 1[i]

Dr. Carlos Gonzalez is a well-known investigator at the peak of his career. He has a reputation for being brilliant, demanding, and intensely competitive. The university values him greatly and he receives offers to move to highly attractive positions elsewhere on a regular basis. His laboratory publishes on average 30 papers a year and he is always included as author.

One of Dr. Gonzalez's first year postdocs, Dr. Grace Hung, comes to him and says that a very important result recently published by his laboratory in the Proceedings of the National Academy of Science was fraudulent. This paper has already received considerable attention. Dr. Hung says the principal author, Dr. Edward Lansing, made up most of the data because a key assay was not working. This was discovered, she noted, when she tried to utilize the assay.

Dr. Lansing has worked with Dr. Gonzalez for five years. The two have published several papers together and have become personal friends. Dr. Gonzalez hardly knows Dr. Hung.

Questions:

1. How should Dr. Gonzalez respond to this complaint? How should he deal with:
   a) Dr. Hung?
   b) Dr. Lansing?
   c) the data that have now been called into question?

d) the institution in which all three individuals work?
e) the journal in which the possibly fraudulent data were reported?

2. Assume Dr. Gonzalez is unresponsive to Dr. Hung's complaint. How might Dr. Hung follow up on her concerns?
3. Assume that Dr. Gonzalez proceeds by asking Dr. Lansing obliquely about the assay used for the project, mentioning that Dr. Hung seems to have some kind of problem with it. In spite of Dr. Gonzalez's subtlety, Dr. Lansing suspects that this inexperienced postdoc has planted some serious suspicions in Dr. Gonzalez's mind. Since Dr. Lansing is confident of the accuracy of his work, how should he respond to Dr. Gonzalez? Should Dr. Lansing approach Dr. Hung, and if so, what should he say to her?

Case Study 2[ii]

Dr. Alice Charles, a mid-career scientist, was revising and updating a book chapter. This led her to review other articles on the same subject to help determine what new material to cover. During the course of her reading, she came upon a chapter in a major text by Dr. Chris Long, a departmental chair at a leading medical school, that contained long passages from her previous chapter without attribution.

Dr. Charles called Dr. Long and confronted him with her finding. At first, he vehemently denied having used any of Dr. Charles's text inappropriately. Dr. Charles then faxed Dr. Long copies of the offending passages. After some delay, Dr. Long finally responded, acknowledging that the language was indeed remarkably similar. Dr. Long noted that he had engaged younger members of his research group to write portions of the chapter because he was very busy at the time that the deadline was approaching. Furthermore, to defend himself, he pointed out that much of the original research on which her chapter was based was derived from the work of his laboratory. He admitted only to negligence in not adequately monitoring the activities of his subordinates.

Dr. Charles replied that the subordinates were not acknowledged in Dr. Long's chapter either, and that admission of plagiarism required more than an apology. She indicated her intention to report the matter to Dr. Long's dean and the editor of the text.

Questions:

1. Did Dr. Charles act appropriately? Would you have done anything differently? Considering the difference in status between herself and Dr. Long, was she taking a professional risk?
2. Did Dr. Long do anything wrong? What if he were copying his own previous writings?
3. How would you have handled this matter if you were Dr. Long and were confronted with Dr. Charles's revelations?
4. If you were Dr. Long's dean, how would you handle Dr. Charles's letter, which contained copies of the plagiarized texts?
5. Upon hearing Dr. Charles's complaint, what would you do as editor of Dr. Long's textbook?

6. In the context of proper credit for the writings of colleagues, who is responsible for what is published and what should be done if plagiarism is discovered?

Case Study 3[iii]

What would you do if you inadvertently discovered evidence that the head of your research group had been discarding data points, apparently to make the results of recent experiments (or studies) look better than they actually were?

Discussion Questions

1. List at least three reasons that the integrity of science is dependent in part on whistleblowing.
2. Describe the relative advantages and disadvantages for an individual who makes an allegation of research misconduct.
3. List at least three steps a potential whistleblower can take to decrease the likelihood of adverse consequences.

Additional Considerations

Consequences

Whistleblowers should be aware of the potential for difficulty. Both whistleblowers and those accused of wrongdoing pay a price whether or not the allegations are ultimately sustained. Although the possibility of explicit or implicit retaliation should not automatically deter a good faith allegation of research misconduct, it is unfortunate when a whistleblower comes forward unaware of potential consequences. Based on self-reports, over 60% of whistleblowers suffered at least one negative consequence, such as being pressured to withdraw their allegation, being ostracized by colleagues, suffering a reduction in research support, or being threatened with a lawsuit. Approximately 10% noted significant negative consequences, such as being fired or losing support. However, fewer than 18% of those suffering the most severe impact on their careers reported that they would be unwilling to come forward with allegations again. (Research Triangle Institute, 1995).

Perspective

Because of the serious consequences of an allegation of misconduct, it is important to be clear about the allegation. This concern is particularly relevant for someone with relatively little experience in research or in a specific area of research. To avoid the mistake of an inappropriate allegation, begin by asking questions and seeking perspective. Depending on circumstances, it may be appropriate to talk to peers, to more senior members of the research group, to someone in an ombudsman program, or to the individual whose conduct is in question.

Interests

The purpose of allegations of research misconduct is not primarily to serve the interests of the whistleblower. Once an allegation has been made, it is not the whistleblower's task to further investigate the misconduct or mete out justice. Procedures for

responding to allegations of research misconduct are designed to protect the integrity of science, rather than to address real or perceived grievances on the part of a whistleblower. If a whistleblower does have specific grievances, then those should be handled separately by whatever procedures are appropriate within the institution.

Conclusions

Presenting an allegation and supporting documentation, a whistleblower should clearly distinguish between facts and speculation. It is easy to fall into the trap of inferring motives on the part of others. By sticking to the facts of the case, a whistleblower (or the accused party) will reduce the risk of a loss of credibility. In short, a whistleblower, as well as his or her case, will be best served by asking questions rather than drawing conclusions.

Resources

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Whistleblower Protection Act of 1989. http://thomas.loc.gov/cgi-bin/query/z?c101:S.20.ENR:

Endnotes

[i] Case F2 from Teaching the Responsible Conduct of Research Through a Case Study Approach, a handbook prepared by the Association of American Medical Colleges (Korenman SG and Shipp AC, 1994)

[ii] Case B6 from Teaching the Responsible Conduct of Research Through a Case Study Approach, a handbook prepared by the Association of American Medical Colleges (Korenman SG and Shipp AC, 1994)

[iii] This case was contributed by Dr. Michael Kalichman (kalichman@ucsd.edu) of the University of California, San Diego. ©2007