

## Preventing the Need for Whistleblowing: Practical Advice for University Administrators

C. K. Gunsalus, Associate Provost, University of Illinois at Urbana-Champaign

Volume 4 (1998): 75-94

# Science and Engineering Ethics

Science and Engineering Ethics (ISSN 1353-3452) is published quarterly by Opragen Publications, PO Box 54, Guildford, Surrey GU1 2YF, UK. Tel/Fax +44 1483-560074; email: opragen@cableol.co.uk. Notes for authors and subscription information can be obtained from the above address or website: <http://www.cableol.co.uk/opragen/>

### International Editorial Board

I. Alexeyeva, Russian Academy of Sciences  
T. W. Bynum, S. Connecticut State Univ, USA  
R. Chadwick, Univ. of Central Lancashire, UK  
D. E. Chubin, Washington DC, USA  
S. Clark, University of Liverpool, UK  
R. L. Fischbach, Harvard Medical School, USA  
M. S. Frankel, AAAS, Washington DC, USA  
P. A. Gaist, National Institutes of Health, USA  
H. G. Gassen, TH Darmstadt, Germany  
P. J. Gilmer, Florida State University, USA  
I. Haiduc, Babes Bolyai University, Romania  
R. D. Hollander, Baltimore, USA  
D. Jamieson, University of Colorado, USA  
S. Jasanoff, Cornell University, USA  
A. Lippman, McGill University, Canada  
H. E. Longino, University of Minnesota, USA

S. P. Nichols, University of Texas, USA  
W. Pearson Jr, Wake Forest University, USA  
J. P. Porter, National Institutes of Health, USA  
J. R. Ravetz, Research Methods Consultancy, UK  
A. Rigual, Our Lady of the Lake University, USA  
A. N. Rowan, Tufts School of Vet. Medicine, USA  
S. Shirahata, Kyushu University, Fukuoka, Japan  
J. E. Sieber, California St. Univ., Hayward, USA  
G. Van Steendam, Int. Forum-Biophilos, Belgium  
J. Swazey, Acadia Institute, Maine, USA  
V. Weil, Illinois Institute of Technology, USA  
A. Weisbard, University of Wisconsin, USA  
H. Weissmann, Saddle River, NJ, USA  
C. Whitbeck, Case-Western Reserve Univ., USA  
P. Whitney, University of Surrey, UK  
M. J. Zigmund, University of Pittsburgh, USA  
J. Ziman, FRS, Bristol University, UK

### Editors

Stephanie J. Bird, MIT, USA Raymond Spier, Univ. of Surrey, UK

**OPRAGEN**  
PUBLICATIONS

## Preventing the Need for Whistleblowing: Practical Advice for University Administrators

C. K. Gunsalus, Associate Provost, University of Illinois at Urbana-Champaign, USA

Keywords: complaint, ethics, grievance, policy, scientific integrity, whistleblowing

**ABSTRACT:** *A thoughtful and well-designed institutional response to a whistleblower starts long before a problem ever arises. Important elements include efforts by the institution's leaders to cultivate an ethical environment, provide clear and fair personnel policies, support internal systems for resolving complaints and grievances, and be willing to address problems when they are revealed. While many institutions have well-developed procedures for handling formal grievances, systems for handling complaints at their earliest stages usually receive less attention. This article focuses on systemic elements necessary for cultivating an ethical environment, good practices in responding to complaints, and the role those practices can play in preventing a confrontation with a whistleblower.*

A university administrator wishing to design a system for effective responses to whistleblowers is probably starting in the wrong place. Just as people with concerns about institutional actions should take great care before becoming whistleblowers, so should universities take precautions to avoid the need for whistleblowing. Thus, a university wishing to assure that it responds well and appropriately to whistleblowers may get good results by focusing upon its overall ethical environment, by providing guidance to faculty and staff for handling complaints and working to resolve the problems that inevitably will arise. Areas in which concentration could prove profitable include training and supporting those whose jobs include responding to complaints, improving personnel policies to be as clear and fair as possible, and carefully designing grievance procedures to be accessible and understandable. Whatever procedures exist should be assessed periodically to determine whether revision would improve them. Most of all, the university wishing to assure effective responses to whistleblowers should cultivate a non-defensive internal culture that doesn't see the existence of a problem as an indictment of the whole institution.

Address for correspondence: C. K. Gunsalus, JD, Associate Provost, University of Illinois, Swanlund Administration Building, 601 East John Street, Champaign, IL 61820, USA. Email: [gunsalus@uiuc.edu](mailto:gunsalus@uiuc.edu)

Ms. Gunsalus, an attorney, has been responsible for a wide range of compliance issues and academic policy matters at her university including responding to allegations of scientific misconduct and providing institutional support to new administrators and department heads.

An earlier version of this paper was presented at the symposium entitled "Damned If You Do, Damned If You Don't: What the Scientific Community Can Do About Whistleblowing" held during the Annual Meeting of the AAAS, Seattle, Washington, 15 February, 1997.

Paper received, 4 November 1997; revised, 28 November 1997; accepted, 8 December 1997.  
1353-3452 © 1998 Opragen Publications, POB 54, Guildford GU1 2YF, England

Why does an effective response start so early? Because every whistleblowing case starts with an individual seeking advice or help with some kind of problem. The spectrum of unhappy people who seek recourse from institutional officials (a broad category in itself) spans those who enter with vague descriptions of their unhappiness to those who enter with a long list of specific complaints. At that stage, only rarely does that person see him- or herself as a whistleblower, or express a wish to file charges or allegations. In fact, a response process may be well along before it ever becomes apparent that a given individual is a whistleblower. Rather, if he or she is heard and assisted with the problem (even if the extent of the response is a respectful interview), the chances are high that the problem can be resolved—or at least prevented from escalating needlessly. Even where the problem is serious or intractable, competent complaint handling can prevent much larger problems, such as the transformation of the unhappy person into a whistleblower.

## I. Background

What is a whistleblower? The Glazers in their classic book *The Whistleblowers: Exposing Corruption in Government and Industry* define whistleblowers as “employees who publicly disclose unethical or illegal practices in the workplace.”<sup>1</sup> They reference Norman Bowie’s six-part requirement for justifiable acts of whistleblowing:

- (1) that the act of whistleblowing stem from appropriate moral motives of preventing unnecessary harm to others;
- (2) that the whistleblower use all available internal procedures for rectifying the problematic behavior before public disclosure, although special circumstances may preclude this;
- (3) that the whistleblower have “evidence that would persuade a reasonable person”;
- (4) that the whistleblower perceive serious danger that can result from the violation;
- (5) that the whistleblower act in accordance with his or her responsibilities for “avoiding and/or exposing moral violations”;
- (6) that the whistleblower’s action have some reasonable chance of success.<sup>1</sup>(p.4)

In short, a whistleblower is someone who alleges wrongdoing with a reasonable belief there is truly something amiss, who has unsuccessfully tried to get it resolved before going public. The reasonable belief that something is wrong is an important component: legal protections for whistleblowers generally require good faith on the part of the whistleblower, and reasonable belief is a foundation of good faith. The classic definition of a bad faith allegation is one made where the individual lodging the allegations “knew or should have known” of the falsity of the allegations. Thus, a whistleblower is someone who has a well-based concern that he or she has tried to resolve by working within the organization where the problem originates. (See companion article on “How to Blow the Whistle and Still Have a Career Afterwards”<sup>2</sup> for advice on proceeding as a good-faith whistleblower.) It goes without saying that if the problem is in fact resolved through institutional procedures, there is usually not an issue to blow the whistle about.

While the individual with concerns is under professional and ethical obligations to raise concerns in good faith, the university has corollary obligations to respond to these concerns even-handedly. If the issue is not resolved to the satisfaction of the complainant, but a complete record of a careful institutional review exists, the likelihood is high that the complaint will not fulfill the requirements of a justifiable whistleblower. On the other hand, if a fact-based response reveals the existence of a serious problem, the institution has an obligation to address that problem at its source, not instead by punishing the messenger. The more the institution’s review focuses on facts, the more likely this is to occur. The guidelines presented below are designed to aid a fact-based focus.

**Process.** The first step in resolving problems is usually informal. An unhappy person may seek advice in his or her academic department, from an ombudsperson, an affirmative action office or from a student services office. In general, there should be (and usually are) many resources for those who are concerned to get help. Some universities provide mediation or conciliation services. Whether or not such a program is available, the most effective systems will likely encompass a mix of well-established protocols, experienced people in key positions and an internal network that provides resources to the wide array of people who serve as problem-solvers. These people should have coaching and support so they can avoid the common mistakes in complaint-handling that can cause a problem to escalate into a whistleblowing situation if not anticipated. Complaint-handling guidelines, whether formally adopted or simply widely accepted informal protocols, should build on experience in dealing with problems and complaints.

Should the informal resolution efforts fail, the next stage typically involves a formal grievance. Well-designed personnel policies will prevent many problems from ever arising and clear grievance procedures will help ensure effective responses to others because they define rights and responsibilities (thus helping to keep expectations reasonable) as well as setting out clear paths to follow when problems arise. Good policies must be both accessible (i.e. they can be found) and clearly written (i.e. they can be understood, when found). They should create a sense of fairness through articulation of the principles on which they are based; definition of the steps that will be followed; and criteria for decisions to be made.

While good grievance procedures are an essential component of effective institutional responses to whistleblowers, they are not the emphasis of this article. Rather, the focus here is upon the responses at the earliest stages before the path to a full-blown grievance or confrontation is irrevocably set. Readers interested in a fuller discussion of the elements of institutional structure that support research integrity can find this in the Special Supplement of *Academic Medicine*, Fall 1993.<sup>3</sup> The 1995 Report of the Commission on Research Integrity also addresses structural components of systems providing effective responses to whistleblowers. The elements recommended by the Commission include: assuring that institutional procedures are accessible from multiple entry points; are overseen by individuals or committees whose members are free from bias and conflicts of interest; are based on independent investigation; are overseen by bodies that are separated in their investigatory and

adjudicatory functions; are balanced in advocacy; are capable of preventing retaliation against participants; and are open to the maximum extent compatible with protecting reputations from inappropriate damage.<sup>4</sup>

**Retaliation.** Both informal complaint-resolution systems and formal grievance procedures should provide protection against retaliation for use of the system. These policies should be formally adopted, and there should be a set of practices that put them into effect. These practices should be responsive to the factors that affect the careers of whistleblowers.<sup>1,5,6</sup> A full discussion of the practices necessary to forestall retaliation and to protect whistleblowers to the greatest possible extent is beyond the scope of this article.

The dangers of retaliation loom large in the minds of those troubled about matters of research integrity and serious damage can be done to careers by the operation of a rumor-mill catalyzed by a request for advice. Fischbach and Gilbert thus advocate the creation of special ombudspersons for research practice who can provide confidential consultation and advice (i.e., without an obligation to report problems that other members of the institution may have.)<sup>7</sup> As Fischbach and Gilbert envision it, these special advisors would be appointed in addition to the university's more general ombudsperson, and would be drawn from among the institution's respected researchers, or would develop a special expertise in the area of research practices. While the concept has much to recommend it, the practice has been slow to catch on in research universities.

In universities without such a function, careful thought must be given to the role of confidentiality by those who provide advice and receive complaints. Those who are able to promise confidentiality must maintain it. Those whose responsibilities might prevent them from keeping a pledge of confidentiality—typically any individual with official institutional responsibilities, from a department head to a research integrity officer—must know about these limits and inform those who consult them about the limits. Whenever the person seeking advice consents to exposure of the complaint, even on a restricted basis, those handling the matter must be trained to ensure that the person's supervisor knows not to take any adverse actions against the person without advance legal consultation.

Beyond the fundamentals of dealing with distressed persons who want to file complaints, there are additional complications when the topic of the complaint falls within the scope of a law or regulation. For example, allegations impinging upon safety concerns, those involving human or animal subjects of research, possible criminal wrongdoing, or use of hazardous materials, may carry extra layers of requirements. Some may mandate rapid action even in the absence of full factual information. An on-going internal training program is likely required to assure that those bearing these responsibilities know about and can meet them.

## II. Overall Ethical Environment

Before addressing the particulars of complaint-handling protocols and systems, let's consider the larger context in which problems arise. The most intangible, but perhaps the most important aspect of any institutional environment for responding to complaints—and thus to potential whistleblowers—is the overall ethical environment.

It would be impossible to articulate all the elements contributing to an ethical as opposed to an unethical environment (much less the myriad intangible factors that contribute to the *perceptions* of that environment), but there are at least five imperatives: 1) The leadership (broadly understood) must make a concerted effort to send the right messages; 2) There must be a system in place to provide safe guidance for the well-intentioned who have questions about correct conduct, including safe ways for people to seek and receive a sympathetic hearing when attempting to work through problems on their own; 3) There should be an emphasis upon creation and maintenance of an environment in which it is comfortable to ask questions; 4) Reasonable assistance must be available to those asking questions to help them develop appropriate responses to their questions, either on their own or with assistance; and 5) Problems, when revealed, must be addressed forthrightly and promptly.

### A) Send the Right Messages

Sending the right messages is a responsibility that starts with the designated leadership of the institution, but further extends to every member of a community who wields power or influence. Because academic environments are non-hierarchical in traditional respects, people within them usually do not feel powerful or believe they have much influence, so this responsibility is likely to be unappreciated by many to whom it applies. Institutional officials have an obligation to articulate that this power exists and how it can be abused if not acknowledged. For example, graduate students who serve as teaching assistants frequently do not appreciate the power—both real and perceived—they wield over the undergraduate students in their classes. To address this situation, orientation programs should explicitly raise awareness of how an undergraduate could feel coerced by a teaching assistant seeking a date or asking for a ride home. Similarly, this message must be brought home to those in other positions who wield formal or informal power to prevent the often unconscious or inadvertent abuses that can occur where power exists without acknowledgment.

In the arena of scientific conduct, every faculty member, laboratory director, department head and college dean should assess the symbolic messages their conduct sends about ethical conduct and the culture they cultivate. Specifically, what messages are being sent and received about professional conduct? Are scientific rigor and accuracy the top priorities, or are those spots reserved for position and power? Do the senior members of the community set a good example, or is their conduct teaching that shortcuts and ruthless selfishness are the way to succeed? How do they deal with mistakes or failures: by taking responsibility and trying to correct the problem or by assigning blame to others?

The answers to these questions will override pronouncements about ethics and official policies on retaliation against whistleblowers. If a formal policy sets ethical standards, but the most powerful members act as if those standards are only for others, legitimate conclusions will be drawn about institutional hypocrisy. Similarly, if retaliation is prohibited in theory, but people who raise inconvenient questions pay a high personal price, there will be a common understanding that the policy is not applied, and the institution's real practice is to retaliate. Thus, if those responsible for these policies mean them to be taken seriously, they must pay attention not only to their formal content, but also to the consequences of their actions for how the environment is perceived. In a large institution, this will be a daunting task because there will be more micro-climates than it is possible to inventory, let alone to influence directly. This means that overarching programs and messages must carry a proportionately heavier burden.

#### **B) Provide Guidance for the Well-Intentioned**

A university or research institution has an obligation to provide sufficient guidance to the well-intentioned to enable them to work out an ethical way to behave in most instances, and have resources to turn to when they have doubts. The educational environment should include enough information that well-meaning students can learn how to meet high professional standards of conduct, both in how to do their work and in how to interact with others.

An important issue frequently overlooked is that professional conduct encompasses more than just content-area skills. Learning to be a professional also includes how to interact with colleagues and subordinates, how to juggle competing demands upon time and energy, and how to acquire and hold jobs. Often unremarked is the fact that it additionally includes learning how to raise questions and conduct disputes—even serious ones—in a professional and responsible way. (See advice on this topic in the companion article “How to Blow the Whistle...” for some suggestions in this area.<sup>2</sup>) Some institutions are beginning to recognize this and to incorporate these and other elements of professionalism and success into educational programs. The Program on Survival Skills and Ethics at the University of Pittsburgh is notable in this area.<sup>8</sup> See also Stephanie Bird's work on mentoring and ethics.<sup>9</sup> Finally, there should be widely accessible information about where to go for advice and consultation about possible problems of scientific misconduct, including how to assess them and the implications of various courses of action.

#### **C) Create and Maintain an Environment in Which it is Comfortable to Ask Questions**

It is incumbent upon mentors, research supervisors, faculty, and their universities to create and maintain an environment in which students, technicians, and other professionals (especially those with little power or influence) can ask questions without fear of repercussions. In such an environment, the problems that do arise are far more likely to be resolved earlier and with less difficulty than if it is widely perceived that questions are seen as challenges to authority and thus are not welcome.

When moving to a new town, it always helps to have a guide to the best places to buy food and get a good haircut. The same is true for a person advancing to a new career phase. When students move from being consumers to producers of knowledge, they need not only explicit guidance but also the comfort to ask even elementary-seeming questions: What is the right way to record and retain data in this laboratory? How do I know whether it is OK to throw out this outlier? How do I get to be an author? Who decides? What happens to the work I have done on unfinished lines of inquiry and my reagents when I leave this lab? May I take them with me or must they all stay here? If the latter, will my work be recognized in the final manuscript? May I take copies of the data I generated while here? May I continue this line of work on my own in my new job? How do I find out? These are just a sampling of the sorts of questions that arise in everyday practice. There are many more. If a person thinks a question will be seen as stupid or that there will be a penalty for asking it, he or she will bluff or fumble along without proper information. The danger is that the answers he or she devises will work to the detriment of the laboratory or university; this can be forestalled by assuring that it is comfortable for those with questions to seek needed information.

#### **D) Help Develop Appropriate Responses**

When questions are asked, there must be some mechanism for helping the recipient of the question develop appropriate responses. Sometimes, the laboratory chief or department head will not know the correct response, or how to find it. There must be resources, like ombudspersons and others, available to the authority figures for when they themselves are stumped. To whom are they expected to turn? Is it easy to find answers, or are all inquiries taken as an indication of incipient problems, for which the messenger is blamed?

Helping the confused or ethically-troubled develop appropriate responses to problems usually requires that those being appealed to for help have themselves given some explicit thought to the kinds of problems that can arise, the patterns they follow, and the rules that apply across a variety of settings. This process can be enhanced if some backing and guidance are provided to those who serve in such roles.

Since so many questions in universities are handled within academic departments, new department heads have special needs for support and written information about the responsibilities being assumed. This should include (at minimum) notification about the compliance obligations for which department heads are responsible and copies of the institution's grievance procedures. Even better is a situation in which they receive some coaching in how to handle complaints. Without some orientation and support in these areas, the sometimes novel solutions devised by smart people without enough context or background can rebound to the institution's later dismay (and cost). Given the turnover in administrative positions in universities, devising ways to help ensure consistent responses to those with problems or concerns is an on-going challenge.

Unfortunately, problems brought to department heads are not always tidily packaged and labeled: at entry, people with problems will not necessarily know under

what grievance or complaint procedure their concerns fall, especially when they have several interlocking concerns, as is quite often the case. Frequently, problems that become research integrity cases are presented along with a laundry list of other concerns, which may include stress-related reactions for which some personal support may be necessary. If a student brings concerns that seem to involve as one component personal troubles beyond the ability of an untrained person to address, is there a way to help refer the student to appropriate counseling resources? (The department head is rarely in a position to provide this support personally, and should not in any event.)

If a student raises questions about rights to data, do lab chiefs and department heads know what granting agencies and the university require? If not, do they know how to find out? Is there one place they can call to get a helpful answer reasonably promptly? Is that resource easily found and accessed? In addition to initial orientation of those assuming administrative responsibilities, each person in such a position should have ready access to help for questions outside their experience or expertise.

### E) Respond to Problems

However problems are brought to one's/an administrator's attention, responses are required. If an internal response is not forthcoming, a would-be whistleblower may well take his or her story elsewhere and be justified in doing so. (Recall the six components proposed by Bowie for a justifiable whistleblower.) Federal agencies, newspapers, and lawyers are likely second-hand recipients of problems universities could have addressed themselves first, if only the appropriate response mechanism had been in place.

If the questions brought to leaders reveal a serious problem, the university must be able and willing to respond, and to do so in a timely manner. Under federal regulations on scientific misconduct, an institution is required to inquire into allegations of misconduct "promptly". Do faculty members and department heads know what to do if they are the recipient of such a report? (Would they recognize it as an allegation and know that there are federal regulations that apply?) Again, training of and support for those in leadership positions can help to assure that they are aware of their obligations and have the tools to fulfill them.

Effective responses to problems require two essential but related safeguards: 1) the very real conflicts of interest within institutions must be acknowledged and acted upon, and 2) actions taken must be rooted in factual determinations, not based upon the positions or personalities of those involved in the problem.

#### 1) Acknowledgment of and Correction for Conflicts of Interest

Universities and their employees do have conflicts of interest when reviewing the conduct of members of their own community. An effective response to a problem must include acknowledgment that many faculty members will likely identify, to some degree, with their colleagues.

If an allegation has been brought against a well-liked (or, conversely, a feared) member of a department, it may be difficult to secure an objective assessment of it.

This possibility must be forthrightly acknowledged, and it must be addressed when the response is developed. This means scrupulous screening to assure that good friends and collaborators are not involved in assessing the validity of the allegations against each other. It also means taking care to address power imbalances in the operation of procedures, and providing support mechanisms, where necessary, to the participants of lowest power. At the same time, it means taking stringent steps to protect confidentiality, as the normal operation of the grapevine can be very damaging in these situations.

#### 2) Actions Must Be Based on Facts, Not Positions or Personalities

*(Remember, Even Flakes Can Be Right)*

This is a corollary to the acknowledgment of conflicts of interest. At all times, assessments of allegations must be rigorously fact-based, and not rest instead upon the "well-known" credibility or reputation of the accused or accuser. The reputation of the accused (as well as the accuser) certainly has some bearing in an overall balancing of a situation, but not at the expense or instead of collecting and reviewing the pertinent facts. So if a whistleblower alleges that certain experiments were not performed or certain data are not accurately represented, it is not sufficient to close a review of the allegation by taking the unsupported word of the accused only. Instead, someone with appropriate expertise should examine the primary data and assess to which version of events they most closely correspond.

Typically, further verification may be necessary to dismiss an allegation of this nature; reliance upon unsubstantiated assertions, even if made by a highly reputable (and powerful) person do not suffice. In fact, the powerful person may be left at serious risk if the allegations are untrue, but are never carefully enough examined to be refuted with solid factual information. The risk is in the reputational damage that can follow the perpetuation of rumors or the costs (emotional and financial) imposed by scrutiny from external examiners whose investigations may not be as expert or as efficient as one that takes place where the context and applicable regulations are well understood. However unpleasant it may be to have the facts examined—in the short term it is important to do so and is far superior to the lingering damage of the possible alternatives. The strongest course involves examination by a small committee, constituted if necessary under a research integrity policy, to make a formal determination about how the facts and allegations interrelate.

Reliance upon position or personality, not facts, is often found where universities have bungled their response to an allegation of scientific misconduct. In these cases, the emphasis has typically been put upon characterizing the (usually junior) whistleblower as unreliable, emotional, distraught and/or troubled at the expense of an objective examination of the facts. While it may be true that the complainant is very emotional—by the end of the process if not at the beginning—this does not have any direct bearing on whether the allegations were accurate and truthful. In fact, the motives and personal stability of the whistleblower may have no direct relationship to whether the accusations are well-founded. Where there is a direct relationship in a negative sense, assembling the documentation and having it at hand can put a rapid end to the matter.

With an understanding of the effect of larger contextual issues upon individual cases and circumstances in hand, let's turn to specifics of handling complaints. Recall that every whistleblower starts by expressing concern about a specific issue—somehow, and somewhere. It is difficult to overemphasize the preventive value of an early reasoned and objective response to a complaint or question: a question or concern that is addressed promptly, fairly, and even-handedly may never evolve into a whistleblower confrontation because the problem will have been resolved.

### III. Complaint-Handling Guidelines

Many people become scholars or scientists because they are more comfortable dealing with ideas than with people. But it turns out that laboratories and departments are full of people, and where people work together, frictions and complaints arise. Dealing with those problems falls into the category of administrative work—it's certainly not scholarship or research. Because it is more administrative than scholarly, a scientist with administrative responsibilities can find him or herself in a situation where these skills are needed, but have not ever been fully developed. To that end, these general guidelines for handling complaints are presented, in the form of an open letter to those with administrative responsibilities.

As background to the guidelines, some caveats may be helpful. First, some of the advice that follows may seem to be general and about responding to personal problems, not specifically tailored to the content of workplace whistleblowing. Nonetheless, this advice is germane because at the root of every whistleblowing problem is a person who started with a concern or a complaint that was not addressed when it was first raised. That person might not have labeled the problem correctly, or even recognized the seriousness of the situation at first. For example, many reports of scientific misconduct arise out of or also encompass concerns about sexual harassment. Second, the advice that follows is designed to assist people at the earliest stages of problems, before it is known whether the problem is one amenable to solution, or is one that requires more serious procedural handling. Guideline Ten provides some information on how to assess whether a first-line administrator should continue to approach a problem informally or whether more formal handling is required.

Finally, before getting to the specific complaint-handling guidelines, there are two important tools. One is internal to the person who may receive the complaint, whether he or she is a peer, responsible for a lab group of three or for a department with 100 faculty members, support staff and students: that person will need to have a good sense of his or her own personal boundaries. The other is to have on hand, ready to use, some key sentences and concepts.

#### An open letter to administrators:

##### A) Set Boundaries: Temporal, Topical and Relational

Many people will seek your guidance about problems that you did not cause and may not be able to fix. Surviving under these circumstances requires a sense of appropriate boundaries in several dimensions.

**About Time.** If you have the time to spend listening to those who are facing difficulties, especially when you can respond immediately, do so. If you do not, however, because you are in the middle of something, or have other obligations, you will need to focus the time you are able to allocate to this topic. In those circumstances, do not hesitate to ask the individual to set up an appointment for another time. Acknowledge your interest in the topic, as well as your desire to have adequate time and focus to have a discussion; then excuse yourself. It often helps to stand up and walk the person out of your office if you are having difficulty bringing the interaction to a close.

**About Topics.** Beyond time-based boundaries, it is also useful to develop a concept of topical boundaries. Be wary of confusing personal and professional roles. You can be cordial and warm without offering or receiving confidences that are more appropriately shared with friends, family members and therapists. If the person meeting with you appears to be seeking advice more normally offered by people in those roles, refer them to available resources; do not take on the role yourself. In turn, you will also need to establish boundaries for yourself and your conduct and not bring your personal problems into workplace interactions, especially with those subordinate to you.

**About Confidentiality.** Finally, you must learn the boundaries of privacy and confidences. Unhappy people will sometimes tell you things you wish they had not. (How much did you really want to know about her ex-husband's peculiar sexual habits?) When that happens, you may want to talk about it with someone else either to help you work through the right answer or simply to express your amazement at the range of human conduct. Curb that impulse to the maximum possible extent. If you must seek counsel, find the most discreet person you can, preferably someone outside your immediate context. Academic departments are very small communities, and even veiled comments can start the grapevine in ways that will be damaging over time both to the person who offered the confidence and to your own reputation. Cultivate a reputation for trustworthiness by keeping confidences. If your role requires you to act upon information you receive—for example, if someone reports mistreatment of human subjects in an experiment in your department—tell the person that you will be unable to keep that information confidential. Say whom you must tell and why. Offer to protect the source only if that is truly within your abilities.

## B) Key Sentences

A good friend of mine prepares for every contentious meeting by knowing what her first sentence is going to be.<sup>10</sup> If she knows that, she says, she can wing it from there. Picking up on that idea, here are some handy sentences to have on hand:

### 1. *“What do you seek from me?”*

If the person you’re meeting with is distraught or extremely upset, you may need to keep repeating this question. The goal here is to set boundaries (on your time and on the topic) as well as to focus on the desired outcome. You may be surprised at how little the person actually seeks or how simple the problem may be to resolve to mutual satisfaction. If the person simply seeks to be heard out, and neither wants nor expects action from you, it is best to confirm that directly. Often, talking through the problem will help clarify a course of action for the person to follow on his or her own. If, on the other hand, the person does seek action from you, seek the most direct statement possible. In that case, the second sentence is often useful.

### 2. *“Just as I listened carefully to your presentation, I need to find out how the other people involved perceive this matter. I will get back to you after I have done that.”*

This is an application of one of the most critical of the guidelines for handling complaints, namely that you should never act after having heard only one side of a story (and sometimes no action at all is the best response). You can stress that you have no reason not to believe what the person has told you, but that you have an obligation to hear more before acting. It is useful to provide an indication of when you expect to be able to get back to the person with whom you are speaking. If it takes longer than you expect, notify the person who came to see you of the delay.

3. If someone threatens to sue you, the University and everyone you ever met, explain that you do not handle legal complaints and see if there are other items that can be constructively discussed. If pressed for advice or for action to avoid the threatened legal action, say

*“You need to do what you need to do.”*

It’s not your job to provide advice or counsel to someone wishing to pursue legal options or to advise them on whether to obtain legal advice. Call the University’s lawyer to explain the situation as soon as the meeting is over.

## C) Guidelines

With these sentences in your pocket ready for use, here are the guidelines for handling complaints:

**1. Don’t Take it Personally.** To the maximum extent possible, do not take problems and complaints personally. Do not get defensive when people complain, and do not jump to conclusions about their causes or solutions. Explore whether the person actually seeks any action from you (remember the key sentences) or whether talking

with you is as much as is necessary for the time being. If the person seeks action, thank him or her for reporting the problem—remember, it is better you know about it than not, especially if it turns out to be a serious matter—and then set about collecting the facts. Keep your demeanor cordial and courteous. Focus on understatement, not emphatic rhetoric. Replace “that’s the stupidest thing I’ve ever heard” with the phrase “I am having trouble understanding this; can you explain it again for me, please?”

Remember that in your administrative role you may need to attend to issues against your wishes or natural inclinations. While some problems may go away if ignored, the serious problems rarely do. They are almost always more easily resolved when caught early. Thus, you need to find out what the person seeks as economically as possible (in time and emotional energy), see who is the appropriate person to act (if at all), gather as many facts as are available and use key sentence number two (“I have to find out how others perceive this matter....”). Then go on to the next step.

### 2. **Never Act on a Complaint Without Hearing (At Least) Two Sides to the Story.**

Most complaints and problems stem from different perceptions or subsets of the same facts. Arm yourself with as complete a sense of the situation as you can get before you commit to a course of action. Do not accuse people when you ask; simply inform them in a low-key way that a problem has been brought to your attention and you need to collect basic information about it.

Under some circumstances, this may be the point at which you must issue some generic warnings about keeping confidences and not taking any actions that might be perceived as retaliation while the facts are under review. Assure all those with whom you speak that you are going to collect facts before acting and that you will respond as fairly as possible once you have done so. (Note that there are some circumstances in which you should probably not act alone, but should proceed under a more formal policy or procedure; in those cases, the facts are best collected by an appointed committee. See discussion below on when to resort to procedure instead of informal, individual action.)

**3. What “Everybody Knows, Nobody Knows.”** This is a corollary to the preceding precept. If someone tells you about a problem and asserts that “everybody knows” that it is happening, this is a good time to start asking how the person reporting it comes to know about it, and also for dates, times, places, and the names of other people who have relevant information. It is remarkable how many widely “known” truths have no factual basis.

So if you are told, for example, that everybody knows that Professor Blue takes work from his students and publishes it in his own name with no credit to the students, it is important to acknowledge how important a matter this could be and to make it clear that you now need to seek some verification. Ask which students have had this happen to them, which publications are involved, or at least how long this is understood to be happening. Has it happened to the person who is reporting this to you? If not, how does that person know?

If the person does not feel he or she can tell you, pursue the matter enough to form a sense of whether the person was talking for effect (where you cannot pin down any

particulars at all, receiving instead only vague conclusions and invective) or is simply so fearful that backing down is preferable to being exposed as the source of the concern. In the latter case, the concern may still be misplaced, but try to get enough information in order for you to pursue the matter quietly for yourself and obtain sufficient information either to dismiss the concern, or to establish the parameters of a possible problem.

Using a variation of handy sentence number two, try to get permission to pursue the matter directly with Dr. Blue in a low-key way (possibly without revealing the person's identity). Or, get a list of the last five graduate students in Blue's laboratory, find out what kind of work they did (for example, their thesis topics) and then review Blue's publication list. The point is not to write the concern off as a form of tunnel vision peculiar to students without some basic cross-checking, especially if it is a persistent rumor or problem. If justified by what you have seen, look at the theses side-by-side with Blue's articles before deciding what to do next. If you think this might be an issue in need of pursuit, you will be in a position to do so based upon your own research, not anyone's report to you. Just as important, if the matter has no merit but keeps circulating in the rumor-mill, you will be in an authoritative position to challenge the rumor and put it to rest.

If you raise the matter with Dr. Blue either on the basis of persistent reports or upon your own research, do not accuse Blue of anything, but instead ask what are his normal practices with respect to students and publication and let that lead to a discussion of the perceptions that might arise from those practices. (However unpleasant the prospect, particularly if the topic arises persistently, you should address it with Blue; how would you like to be the topic of repeated conversations between various parties and your department head and not know about it? On the other hand, to protect those consulting you, you may need to have done this research on your own so you can be the source of the questions, not the students.) It could be that Dr. Blue doesn't provide enough information to his students about what he does with their drafts, it could be that something is truly amiss about which you should be informed, or it could turn out not to be a problem at all. Especially if raised by many people or widely perceived as a problem in the "everybody knows" category, neither you nor Dr. Blue will be well served by dismissing the complaint without some understanding of what is actually going on and why the complaint might have arisen. You may not need to take any further action, but you won't be blind-sided by malicious gossip or by the consequences of practices that raise legitimate questions.

**4. When in Doubt, Leave it Out.** If the sentence about to come out of your mouth begins "I know you won't like hearing this, but..." or if your better judgment is telling you not to say something, do not say it. This rule also applies to written communications. Short is better than long in contentious situations. The more words you offer, the more there is to nit-pick. Emphasize facts and decisions, ask quiet questions, and avoid explanations of motives.

**5. Never Attribute to Malice that Which Incompetence Will Explain.** We are far too fast to attribute bad motives to others when, most of the time, bad things happen

through inattention, inaction, or miscommunication. The first step when concerned about something that is happening is to ask about it: "Is this right?" "I must not understand fully; can you help me?" "How can this be reconciled with our decision to do X?" Quite often, we have not understood.

Another useful technique is to repeat back what you have heard the person say until you get it right. Sometimes, miscommunication is complicating the situation. Other times, more rarely in my experience, something is truly amiss and requires action. But asking first, and applying the Golden Rule ("Do unto others as you would have others do unto you"), will together resolve an extraordinary number of apparent problems.

**6. Say What You Will Do and Do What You Say; Set the Time Frame.** Once you have decided upon a course of action, even if it is just to talk to various people to gather information, follow through on it. Nothing will compromise your credibility more than to make commitments you do not fulfill or to declare boundaries you do not enforce. Just as some parents unintentionally train their children to have temper tantrums in grocery stores by providing candy to calm public misbehavior, you too can train people to behave inappropriately if by doing so they can get you to bend or break announced rules. For example, every now and then, you may encounter a person who becomes a committed grievancer: every possible waiver or exception is sought and every denial or other problem is turned into a formal grievance and pursued to the maximum possible extent. If, through exhaustion or a wish for a simple solution, you grant an exception or waiver to such a person where you normally would not, you may find that you have simply reinforced the grievancing habit, and actually made your job harder for yourself, rather than easier.

**7. In the Absence of Facts, People Make Them Up.** What they imagine is usually worse than the reality. Do not leave people who are distraught or worried hanging for long periods of time. (The definition of a "long" period of time will vary proportionately with how upset the person is.) Form the practice of telling people what steps you will take; when you will get back to them; and that you will notify them if your concept of the timeframe alters, then stick to your word. You may also want to invite the person to contact you if circumstances, including his or her level of anxiety, change in any way before you are scheduled to respond.

**8. Keep Notes.** You do not have to transcribe meetings word-by-word, but have some reasonably orderly system for noting the date, who was present and the gist of meetings that involve complaints. The longer you leave matters unrecorded, the more creative later renditions are likely to become. Contemporaneous notes are much more useful than subsequent recreations.

If a problem escalates into a situation under external scrutiny or becomes the subject of a lawsuit, these notes may later be made public or be given to others through the operation of freedom of information acts, legal rights of employees to inspect personnel records, or the discovery process associated with lawsuits. That does not mean you should not take and keep notes; it merely makes it all the more important

that the notes are confined as much as possible to factual matters. If you have stray judgments or editorial comments upon the complaint or person before you, these notes are not the place to record them. (An attorney representing a university [not my own!] in a sticky case once told me about the dilemma presented by a department head's notes of a pivotal telephone conversation that contained marginal doodling and comments like "what a jerk!" and a drawing of a firing squad. Do not put yourself in such a position.)

If you're worried that your advice wasn't clearly heard, send a short note—even by email—confirming that you met and sketching out the kinds of things you said. Your note can read like this: "Thank you for coming to see me. I found it useful to hear about your concerns. As I said in our meeting, I will seek additional information on this situation because I had no previous knowledge of it. I expect to get back to you by a week from Thursday. If there is any change in this schedule, I will notify you." Follow the maxim that good news can be put in writing, but bad news should be delivered in person (even if sensible practice often requires that it be confirmed after the fact in writing).

**9. Trust Your Instincts.** If you feel anxious or fearful when dealing with a situation, trust your instincts and call upon someone else in the university for help—but choose someone who will not talk about the situation beyond appropriate boundaries. Nobody in a university gets paid enough to work in fear. Unfortunately, we live in a world where troubled people sometimes cause harm to themselves or others. Most places have people who deal with difficult problems and people, who will be able to help you—but only if you call upon them. No one will think less of you for asking, and it's far better to be safe (or feel foolish) than to be sorry. Or hurt.

**10. Some Problems Require Formal Process.** There are some situations you should not try to handle informally. Virtually all formal personnel actions (reprimands, discipline, terminations, etc.) fall into this category. Beyond that, use formal process if: 1) the situation involves people who are extremely volatile or where the power differences are unusually large—for example where a starting student is complaining about the conduct of the star faculty member in a department; 2) the problem has deep roots (when people start to tell you about it, the first event they want to describe is more than five or ten years ago); 3) it involves allegations that, if true, are extremely serious or possibly criminal; or 4) two or more of the people involved in the situation have sexual relationships with each other. For various reasons, each of these situations will be so complex that you will benefit from the application—and protection—of prescribed procedures.

For situations this complex, it is a good practice to acquaint yourself in advance with the resource people on your campus. There may be help available from an ombudsperson, an employee assistance program, a human resources office, the counseling center, the university attorney, or even from staff in the provost's office. Find out who they are and what they have to offer before you have an emergency on your hands.

There are also circumstances when you should not meet one-on-one with another person. It pays to have a witness or another participant in a meeting when emotions are running very high, when you are delivering bad news, when the individual with whom you are meeting is extremely volatile, or when your experience with the person is that he or she has selective hearing. For example, if you've found that saying "I cannot make any promises, but I will inquire into the situation" turns into "You promised you would have that result changed," then do not meet with that person again alone. If the person has a history of turning against those who have tried to help (e.g., by filing charges against them), then do not meet that person alone. In those situations, having a witness to what was actually said (and who notes it down at the time or immediately afterward) is a sensible precaution.

#### IV. Institutional Response to Problems

There is one more complication that attaches to situations where whistleblowers are involved, and that is in designing responses to the problems that may have been brought to light. Universities are notoriously bad at this aspect of the problem.

Common sense goes a long way in dealing with problems, especially when/if guidelines of the sort recommended here are applied relatively consistently. But the nature of the problem shifts when it is time to respond to a problem with the facts in hand. In deciding what action to take in response to a complaint, bear in mind one last truism: No Good Deed Goes Unpunished. Most particularly, "good deeds" are often punished when the rules are bent for the wrong reasons, and can have unexpected negative consequences for the well-meaning favor-doer. Another way to think about this is as the Doctrine of False Compassion.

##### A) No Good Deed Goes Unpunished: The Doctrine of False Compassion

Mostly, you cannot rescue people from the natural consequences of their own bad choices. It pays to give extra chances to the young, especially in an educational institution. Compassion is misguided, however, when it keeps people from experiencing the serious consequences of their own actions (especially repeated ones), or when its overall effect disadvantages someone else. Recall that unreasonably extending the extra chances of a person with marginal qualifications or achievements is likely to be leaving another more qualified person without a seat in an educational program or a chance at a tenured position.

Even worse than the disadvantage to another is the likelihood that false compassion will cost time and money. Remarkably often, a person who is granted an exception against good practice and good judgment will become a repeat customer, seeking one compromise after another. When the line is finally drawn, it will incur unpleasant consequences, and even wrath. The resulting problem will be worse than would have resulted from an even-handed application of the rules in the first instance. Even worse, granting exceptions to well-designed rules may over time make those rules generally unenforceable and open the institution to claims that exceptions are granted in an arbitrary or discriminatory fashion. If a rule is so harsh in its effect that

those responsible for its enforcement are constantly seeking ways not to enforce it, it is far better to re-examine and revise the rule than to avoid its application on an *ad hoc* basis.

## B) The Aftermath of Process

At the beginning of the process, the person at the intake point for a complaint must deal straightforwardly with the complainant, but also must not forget the obligation to be fair to the person about whom the complaint is lodged and all others who may be involved. The accused person has not yet been found to have violated any rule or policy, and complaints can be (and sometimes are) lodged without any foundation. At the end of the process, different considerations apply. By then, some facts should be available to guide the university's response. The institution has differing obligations to different parties.

**To the Complainant.** A key factor affecting the institution's obligations to the complainant is whether the person is judged to have been acting in good faith. A factor affecting that judgment—but not the determinative factor—is whether the concerns were well-founded or were mistaken. There are virtually no circumstances under which a good-faith complainant should be penalized for having raised concerns whether or not that person's concerns turned out to be well-founded. That is, if the complainant had a reasonable basis for believing that something was seriously amiss—even if it was not—that should not be the basis for sanctions against the person raising the question. The complication is that, quite often, a person who raises concerns does so because he or she feels harassed by, or has come to dislike or mistrust the party about whom their complaint centers.

Sometimes, the mistrust has arisen because the complainant is undergoing disciplinary action or facing dismissal (whether from a position or from an educational program). While raising a concern does not insulate the complainant from deserved sanctions for misconduct or inadequate performance, very careful review by objective parties is required to ensure that the actions are based on well-documented performance problems (preferably dating from before the person started raising concerns) not on the act of filing the complaint. Legal advice is almost always required and should be sought in these situations. In some circumstances, it may pay to give the person an additional chance before imposing discipline, to be extra sure that the actions are not retaliatory or seen as such.

If the complaint is judged to have been brought in bad faith, then any pre-existing plan to impose discipline may be revived, and careful consideration should be given to applying sanctions for the bad-faith act. The latter requires a specific finding that the complainant knew or should have known of the falsity of the complaint at the time he or she lodged it. Just as a community must not penalize the well-intended (even when they are confused), it should not countenance those who maliciously file false charges.

**To the Target.** For the target of the concerns or complaints, formulation of follow-on action also requires consideration of several separate dimensions. If the concerns were not justified, the more carefully confidentiality has been preserved, the better off the person about whom the complaints were brought will be. If the complaints were widely aired, it may be necessary to make public the facts upon which the person was cleared; the person's individual preferences should be sought and honored to the maximum extent in such situations. Some people will prefer to let the matter go without drawing additional attention to it; others will seek wide circulation of their vindication. The most difficult dilemmas will arise when the result falls in a gray zone: neither party is completely wrong, but neither is covered in glory. Such outcomes are distressingly common, and can only be addressed through negotiation and common sense. Sometimes, there will not be a "good" answer, only some options that seem less odious than others. Another difficult situation is one where examination has shown the original complaint to be unfounded, but other problems requiring institutional response have been revealed in the course of the examination.

If the facts reveal that there was a serious problem (whether or not the original one of the complaint), and the institution is taking action in response (thus assuring that the complainant should not become a whistleblower, by the way, if the response is thorough and fair), different factors come into play.

## C) After a Transgression, Assess Comprehension, Responsibility and Remorse

At the conclusion of an internal review of conduct, if the result is a finding that rules have been broken, especially fundamental, serious violations, it is critical to assess three factors before deciding upon the actions to take against the violator. Educational institutions should believe in the value of forgiveness and rehabilitation, but must do so in a clear-sighted way. In many circumstances, there will be an intuitive identification with the violator, especially if that person is young, much like those responsible for imposing sanctions, or has received many years of advanced (and expensive) training. The impulse will be to preserve that person's career, if possible. The following three factors must be carefully assessed before moving in that direction:

- a) Does the transgressor understand the nature of the offense? That is, is there understanding of the rule, why it exists, and why it matters that it was broken? Or is the transgressor's response that the rule did not really matter, that it only applied to others anyway?
- b) Is there an acceptance of responsibility? Does the rule-breaker agree that he or she is the one who took the action in question, or is it someone else's fault? Or was it really the fault of the secretary, the student, the colleagues, or the system, which imposed so many pressures, that the rule had to be broken? Without an acceptance that he or she is responsible for his or her own conduct, rehabilitation cannot take root.
- c) Has the rule breaker said he's sorry for breaking the rule, taken any action to prevent recurrence or to apologize? Or is he mostly sorry he got caught?

Without comprehension of the import of the rule, acceptance of responsibility for its violation and remorse for the actions at the root of the situation, as well as their effects, a rehabilitation plan will be a waste of time. In that situation, the institution should consider imposing a meaningful penalty, with the goal of reinforcing its overall ethical environment: those who have not committed serious transgressions should not get the message that crime does pay after all.

In all of these situations, think about what a university is (or should be) trying to achieve from the perspective of its multiple constituencies. In its educational mission, it must do more than provide topic-specific instruction and training. Undergraduates care about the totality of their experience, especially on residential campuses, including being treated consistently with respect. Graduate education involves providing the tools for students to undertake a complex transformation from being consumers of knowledge to becoming creators of knowledge. In turn, this requires personalized guidance throughout a student's time at the university. Faculty and professional employees not only receive their paychecks but seek interesting colleagues, good facilities, and intellectual stimulation. All employees care about fair and even-handed treatment. External constituencies seek value for their investments in the university (whether through state allocations for public universities or through federal research funding for all universities), and they seek accountability. Alumni seek to be proud of their home institution—and not to read about its scandals in the newspaper. The list could go on. This multiplicity of constituencies and interests means that it is worthwhile thinking in a very broad sense about what constitutes an ethical environment, and how to meet those expectations.

## REFERENCES

1. Glazer, M. P. & Glazer, P. M. (1989) *The Whistleblowers: Exposing Corruption in Government and Industry*, Basic Books, New York.
2. Gunsalus, C. K. (1998) How to Blow the Whistle and Still Have a Career Afterwards, *Science and Engineering Ethics* 4:51-64.
3. Gunsalus, C. K. (1993) Institutional structure to ensure research integrity, *Academic Medicine Supplement* 6:S33-S38.
4. Commission on Research Integrity. (1995) *Integrity and Misconduct in Research, Report to the Secretary of Health and Human Services, the House Committee on Commerce and the Senate Committee on Labor and Human Resources*. Washington, DC: US Dept of Health and Human Services, Public Health Service: pp. 24-26.
5. See, for example, Edsall, J. T. (1995) On the Hazards of Whistleblowers and on Some Problems of Young Biomedical Researchers in our Time, *Science and Engineering Ethics* 1:329-340.
6. Research Triangle Institute (1995) *Consequences of Whistleblowing for the Whistleblower in Misconduct in Science Cases*; Submitted to the Office of Research Integrity.
7. Fischbach, R. L. & Gilbert, D. C. (1995) The Ombudsman for Research Practice: A Proposal for a New Position and an Invitation to Comment, *Science and Engineering Ethics* 1:389-402.
8. Web Site for Program in Survival Skills and Ethics, University of Pittsburgh: Michael Zigmund, Director; Beth Fischer, Assistant Director. Last updated September 19, 1997; Accessed October 25, 1997. <http://www.pitt.edu/~survival/>
9. Bird, S. J. (1994) Overlooked aspects in the education of science professionals: Mentoring, ethics, and professional responsibility, *J. Science Education and Technology* 3:49-55.
10. My thanks to Harriett F. Weatherford of the University of Illinois for teaching me this lesson.