The Whistle-blowers
(20-30 years of fraud, and those who blew the whistle).

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Introduction

- **Whistle-blowing?** Calling attention to wrongdoing that is occurring within an organization.

- The Government Accountability Project* lists four ways to blow the whistle:
  1. Reporting wrongdoing or a violation of the law to the proper authorities such as a supervisor, a hotline or an Inspector General;
  2. Refusing to participate in workplace wrongdoing;
  3. Testifying in a legal proceeding;
  4. Leaking evidence of wrongdoing to the media.

- *a Washington, D.C.-based whistleblower protection organization (NGO)
Many give credit to activist Ralph Nader for putting forth the phrase into the national discourse in the early 1970s to avoid the negative connotations found in other words such as “informers” and “snitches.”

Hmmm.
Preliminary Thoughts

- Have you ever blown the whistle?
- Wanted to blow the whistle?
- Known someone who blew the whistle?
- Have you or someone you know suffered as a result? How?
False Claims Act (FCA)

- The first law adopted specifically to protect whistleblowers was the 1863 False Claims Act (revised in 1986), which tried to combat fraud by suppliers of the U.S. government during the Civil War.
- The FCA encourages whistleblowers by promising them a percentage of the money recovered by the government (10-30%) and by protecting them from employment retaliation.
- Such *qui tam* lawsuits use special procedures to keep the claim from becoming public until the federal government makes its decision on direct prosecution.
False Claims Act (FCA)

- Its name is an abbreviation of the Latin phrase *qui tam pro domino rege quam pro se ipso in hac parte sequitur*, meaning “[he] who sues in this matter for the king as well as for himself.”

- Some refer to it as the *Lincoln Law*.

- FCA allows private citizen whistleblower (i.e., a “relator”) to file a *qui tam* action on behalf of the federal government to recover funds paid as a result of fraud.

- The IRS (2006) and SEC have formal Whistleblower Programs now.

Whistleblowers are allowed to initially report fraud anonymously by filing a claim through an attorney.

*Employers may not retaliate, fire, demote, suspend, threaten, harass, or discriminate against a whistleblower.

With respect to whistleblowing, the legislative history of the Act explains that “whistleblowers often face the difficult choice between telling the truth and the risk of committing ‘career suicide.’”
Environmental Laws with Whistleblower Protections

- The Lloyd–La Follette Act of 1912: “the right of employees... to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.” 5 U.S.C. § 7211
- Clean Water Act of 1972
- Safe Drinking Water Act (1974)
- Resource Conservation and Recovery Act (1976)
- Toxic Substances Control Act of 1976
- Energy Reorganization Act of 1974 (through 1978 amendment to protect nuclear whistleblowers)
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or the Superfund Law) (1980)
- Clean Air Act (1990)
Others with Employee Protections

- Similar employee protections enforced through OSHA.
- **Surface Transportation Assistance Act** (1982) to protect truck drivers
- **Pipeline Safety Improvement Act** (PSIA) of 2002
- **Wendell H. Ford Aviation Investment and Reform Act** for the 21st Century (“AIR 21”)
Wisconsin: Common (Employment) Law

- An employee may not be discharged for a reason that violates a fundamental and well-defined public policy.
- Employers may not require employees to violate a statute or constitutional provision.
- So, while Wisconsin courts have not yet recognized a general whistleblower protection, employers may not discharge employees who fulfill a statutory obligation to prevent wrongdoing by reporting the wrongdoing to appropriate authorities.
An employee may not be discharged (or discriminated against) in retaliation for opposing an unlawful discriminatory practice.

Nor may an employee be discharged (or discriminated against) in retaliation for filing a complaint, testifying, or assisting in a proceeding, under the Wisconsin Fair Employment Act (WFEA).

WFEA prohibits discrimination in employment on the basis of age, race, creed, color, disability, marital status, sex, national origin, ancestry, arrest record, conviction record, membership in the national guard, state defense force, or any reserve component of the military forces of the U.S. or Wisconsin, or use or nonuse of lawful products off the employers premises during nonworking hours. Wis. Stat § 111.322(3).
Wisconsin: State Employees

- Under Sections 230.80-85 of the Wisconsin Statutes, an employee of the State of Wisconsin, except for certain exceptions listed in s. 230.80(3), may not be retaliated against for disclosing information regarding a violation of any state or federal law, rule or regulation, mismanagement or abuse of authority in state or local government, substantial waste of public funds or a danger to public health or safety.

- An employee may disclose information to any other person.

- However, before disclosing information to anyone other than an attorney, collective bargaining representative or legislature, the employee must do one of the following: disclose the information in writing to the employee’s supervisor, or disclose the information in writing to an appropriate governmental unit designated by the Equal Rights Division.
Prominent Whistle-blowers in Business Law

- Karen Silkwood (Kerr-McGee)
- Jeffrey Wigand (Brown & Williamson)
- Sherron Watkins (Enron), WorldCom’s Cynthia Cooper and the FBI’s Coleen Rowley.
- Harry Markopolos (Madoff)
Context of Sport

- Academic Fraud
- Title IX violations
- Violence or bullying in the workplace (Hazing, retaliation)
- Intentionally throwing a game (Point-shaving)
- Exposing lack of medical concern or treatment (e.g., CTE)?
- Use of PED’s (Biogenesis [Porter Fischer/Tony Bosch]; BALCO [Trevor Graham/Victor Conte])
Jan Kemp (Georgia)

- One of the earliest whistle-blowers was Jan Kemp, who in the early 1980s exposed the University of Georgia for allowing football players who failed a remedial English class to play in a bowl game.

- “There is no real sound academic reason for their being here other than to be utilized to produce income,” Kemp told *Sports Illustrated* in 1986.

- “They are used as a kind of raw material in the production of some goods to be sold ... and they get nothing in return.”

- She was demoted in 1982 and then fired in 1983, and the trauma led her to attempt suicide twice in the 1980s, once by stabbing herself in the chest with a butcher knife.

- She also sued UGA officials, saying she was terminated unlawfully, and won compensatory and punitive damages from a jury in 1986. She was later reinstated.
Jan Kemp

- UGA had defended its actions saying that Kemp was dismissed for “disruptive conduct and for failure to conduct adequate scholarly research.”
- The jury awarded $2.5 million, which was later reduced to $1.08 million.
- After she was reinstated and University President Fred C. Davison resigned in 1986 though he remained a member of the faculty for two more years.
- Kemp retired from teaching in 1990 and was named a hero of the 1980s by People magazine.
Jan Kemp

- Died in 2008 at only 59 years old (Alzheimer’s).
- She was the Drake Group’s first honoree in 2004.
- The **Drake Group**, an organization of educators and activists who push for academic reform, now annually awards its **Robert Maynard Hutchins Award** to faculty who stand up for academic integrity.
- Robert Maynard Hutchins was the President of the University of Chicago from 1929 to 1951, where he defended the liberal arts, and opposed the rampant commercialization of college football which, in his view, undermined the core values of higher learning.
- [http://thedrakegroup.org/](http://thedrakegroup.org/)
Jan Gangelhoff: The University of Minnesota basketball scandal involved NCAA rules violations, most notably academic dishonesty involving the University of Minnesota men’s basketball program.

The St. Paul Pioneer Press published an article on the day before the 1999 NCAA Tournament, with revelations by Minnesota academic counseling office manager Jan Gangelhoff that she had done coursework for at least 20 Minnesota basketball players since 1993.

The story led to the immediate suspension of four players from the Minnesota basketball team pending an investigation for academic fraud.
Jan Gangelhoff

- Also led to resignations of head coach Clem Haskins, men’s athletic director Mark Dienhart, and university vice president McKinley Boston.
- In 2000, the NCAA placed the Minnesota men’s basketball program on four years’ probation and reduced scholarships.
- In 2000, George Dohrmann won the Pulitzer Prize for beat reporting for his reports on the scandal.
- Subsequently, Jan suffered from bouts of depression, underwent quadruple bypass heart surgery, and lost 80 pounds.
- **She died in 2005 at only 56.**
In the late 1990s, Linda Bensel-Meyers at Tennessee was an English faculty member who saw tutors doing too much work for student-athletes.

She supervised first-year composition at the school, finally went public about a pattern of plagiarized term papers and altered grades among athletes.

Bensel-Meyers’ office had twice been broken into and trashed.

In 2003, after years of hate mail and verbal attacks, she decided to leave Tennessee because death threats mentioned her children.

Bensel-Meyers said she was treated so badly she had symptoms of post-traumatic stress disorder, and when she resigned, she told the university in her resignation letter: “No faculty member should ever find her attempts to do her job met with institutional threats and public attacks on her character.”

After 17 years at UT, she left for the University of Denver in 2003 where she is now a department chair.
Professor David Ridpath was Assistant Athletic Director for Compliance and Student Services at Marshall University.

As a compliance officer from 1997 until his reassignment to another position in 2001, he reported that Marshall football players were being paid $200 a day to work at the MacCorkle Machine Shop owned by Marshall Reynolds, in violation of NCAA rules.

Ridpath was not fired, but moved to Director of Judicial Programs at Marshall.

Ridpath sued in federal court.

He named as defendants the Marshall University Board of Governors; then-university president Dan Angel; former head football coach Bob Pruett; university general counsel F. Layton Cottrill; and former senior vice president of operations K. Edward Grose.
Ridpath

- He sued for an apology, $350,000 and the removal of the term “corrective action” from his file.

- In 2009, Marshall University announced it would pay Ridpath $200,000 to settle the lawsuit that accused the school of making him a scapegoat in the student-athlete employment probe.


- Ridpath has released his book *Tainted Glory: Marshall University, the NCAA and One Man's Fight for Justice.*

- Now at Ohio University.
Norma McGill was a graduate teaching assistant in the African-American and Africa Studies Department at Ohio State University.

When McGill witnessed star running back Maurice Clarett walk out of his midterm exam in 2002 and then retake the test orally, and later complete his final exam orally, she questioned the entire student-athlete system at Ohio State.

When McGill called on school officials to investigate how student athletes were being treated, she claimed she suffered hostile treatment from the department chair.
Norma McGill

- McGill left to Kentucky and ultimately met with the NCAA over the matter.
- An internal investigation found no evidence to support allegations of academic misconduct made against the Ohio State football program.
- OSU President Karen Holbrook and athletic director Andy Geiger revealed that the NCAA read the school’s report and would take no further action in the matter, which began with a story in The New York Times.
- In sum, there was no action taken.
In 2009, Sally Dear-Healey, adjunct lecturer at Binghamton University (SUNY-Binghamton), told the *New York Times* she was pressured to change her grading policy for basketball players who were missing classes.

About seven months later, she was fired, and felt it was because she spoke out. The university denied that charge.

Her dismissal notice cited the “uncertain fiscal environment” and “strategic reprioritization of resources across the university.”

Sally Dear-Healey currently teaches in Child and Family Studies at Syracuse University and SUNY Oneonta.
From 2010 to 2012, Murdock served as the director of basketball player development for Rutgers University, working with Rutgers basketball coach Mike Rice.

Murdock said he acted as a whistleblower by showing recordings of Rice launching homophobic slurs to players to Rutgers athletic director Tim Pernetti in late 2012, leading to the eventual firing of Rice and the resignation of Pernetti in April 2013.

Murdock was fired from Rutgers University and then sued for wrongful termination.
Then, in 2013, The FBI investigated whether former Rutgers director of basketball operations Eric Murdock tried to extort the university, the *New York Times* reported.

Murdock’s lawyer sent a letter to Rutgers officials two weeks after Rice’s initial suspension demanding $950,000, a sum that the university chose not to pay.

Now owns a restaurant in New Jersey called Stapleton’s.
Mike McQueary (Penn State)

- Former Penn State Wide Receivers Coach left in the wake of Jerry Sandusky’s crimes at Penn State University.
- McQueary testified before the grand jury that he personally witnessed Sandusky in the shower with a young boy, engaging in distasteful acts.
- McQueary testified that he reported the incident to now-deceased icon Head Coach Joe Paterno and later reported it to the two high-level administrators.
- On November 11, 2011, Penn State announced McQueary would not be serving as receivers coach in the final home game of the season due to threats against him, and put him on indefinite paid administrative leave.
- Then, he filed a $4 million whistleblower lawsuit against Penn State for expected lost wages after his contract was not renewed in the summer of 2012.
In his complaint, McQueary says he suffered “irreparable harm to his ability to earn a living” because Penn State discriminated against him for providing truthful testimony in the Sandusky case and at the preliminary hearing in the criminal case because he would be a key prosecution witness at the trial of former Penn State president Graham Spanier, former A.D. Tim Curley and former PSU V.P. Gary Schultz.

Case still on-going.
In 2015, the University of North Carolina paid a $335,000 settlement to Mary Willingham, the former learning specialist who was the whistleblower in the school’s academic fraud case.

Willingham filed a lawsuit against UNC claiming she was retaliated against and demoted for drawing attention to a nearly two-decade fraud.

She sued UNC in 2014, with claims of a hostile work environment and retaliation.

The Drake Group selected Willingham in April as the 10th recipient of an award recognizing university faculty or staff who speak out about academic integrity at their institutions.

“It gets me out far enough that I will be able to get a job.”
Willingham resigned amid the scandal.

She sought her job back in her suit, but that was not part of the settlement.

“We believe the settlement is in the best interest of the university and allows us to move forward and fully focus on other important issues,” UNC spokesman Rick White.

Willingham initially raised her concerns about the low reading levels of student-athletes, with research that showed a majority of the 180 athletes tested could not read at a high school level.

The eventual investigation led to awareness of “paper classes” that never met and earned students high grades for papers, regardless of their quality.
Glenn Hedden was the former athletic director at Kean University (N.J.), until he was fired after 22 years.

He was officially fired for “failing to fulfill his professional responsibilities as athletic director and as the key university official responsible for overseeing compliance.”

Hedden claimed the real reason he was fired was because he disclosed academic fraud and other rule violations to the NCAA, and then he sued Kean for wrongful termination.

He argued that by complying with his NCAA obligations and self-reporting, he was acting as a whistleblower under the New Jersey’s Conscientious Employee Protection Act (CEPA).
CEPA prohibits retaliation against an employee who “[d]iscloses or threatens to disclose to a supervisor ... [a] policy or practice of the employer ... that the employee reasonably believes is in violation of a law, rule or regulation.”

In the Fall of 2010, a Kean faculty member told Hedden that she suspected a women’s basketball player was taking less than the NCAA-required 12 hour course load to maintain eligibility for competition.

Hedden discovered that this particular student-athlete, along with several other members of the women’s basketball team, had enrolled in a “History of Spain” course.

The course was related to the team’s basketball trip through Spain and France during the previous summer.
After three years of litigation, the case was settled for $1.8 million.

In April 2012, the NCAA Division 3 Committee On Infractions cited the school for “major violations,” placed all 13 of the university’s teams on probation until April 2016, banned the women’s basketball team for the 2013 postseason, and censured head coach Michele Sharp for “consistently failing to work within the athletics department structure.”

She was removed as coach in 2012.

She now coaches in the Clark School District in New Jersey.
Jackson v. Birmingham Bd. of Educ., 544 U.S. 167 (2005): High school coach Roderick Jackson complained about inadequate and disparate treatment in facilities between boys/girls locker rooms, etc.

He was then fired for blowing the whistle.

Supreme Court holds that one can file a complaint [a private right of action] for an alleged Title IX violation even though they were not directly impacted or subject to the discrimination if they were retaliated against for filing the complaint.

Put differently, he was considered an indirect victim of sex discrimination because he tried to rectify the gender discrimination that his athletes were experiencing.
The Court’s reasoning was that Title IX mirrors Title VII of the Civil Rights Act of 1964 even though it is not explicit in the Title IX statute.

Key from this decisions is that Title IX protects individuals who complain about violations are protected from retaliation by superiors or administrators.

“Retaliation against a person because that person has complained of sex discrimination is another form of intentional sex discrimination encompassed by Title IX’s private cause of action.” Jackson v. Birmingham Bd. of Ed., 544 U.S. 167, 173 (2005).
On November 29, 2006, the Birmingham School Board and Coach Jackson reached a settlement, naming him head coach of the girls’ varsity basketball team at Jackson-Olin High School in Birmingham.

They also agreed to take all steps necessary to ensure a level playing field for female athletes in all its schools and programs, including appointing Title IX Coordinators for the Birmingham school system and for each school within the system; adopting Title IX polices and grievance procedures; conducting all training necessary to ensure compliance with Title IX; and conducting a review of compliance with the Title IX athletics regulations in all schools and programs in the Birmingham school system and preparing public reports of the findings.
FIFA whistleblower Phaedra Al-Majid will “look over my shoulder for the rest of my life” she said, after providing testimony that led to a two-year corruption investigation into Qatar’s bid for the 2022 World Cup.

Al-Majid disclosed her knowledge to Michael Garcia, the FIFA ethics prosecutor who led the investigation into corruption allegations surrounding the bidding process for the 2018 and 2022 World Cup tournaments.
Robin Potera-Haskins: coach of the women’s basketball team at Montana State University (MSU) (2001-2004) and claimed retaliation for reporting gender discrimination in violation of Title IX.

Abar Rouse: Baylor University basketball scandal with Dave Bliss

Brenda Monk: Florida State

Nevin Shapiro: University of Miami

Tiffany Terrell-Mayne: Louisiana State

Matt Walsh: Spygate (New England Patriots)

Jose Canseco: PED’s in MLB

Bruce Pearl: Iowa Assistant, Illinois informant over recruit Deon Thomas

Kara Goucher, and Steve Magness: Alberto Salazar, Nike Oregon Project? TBD
Others

- **Brian McNamee**: PED’s and Roger Clemens
- **Carla Berry**: Inappropriate relationship reporting, involving Pokey Chatman
- **Louis Johnson**: reporting of illegal recruiting involving O.J. Mayo
- **James Gundlach**: Auburn University and directed reading courses
- **Ron Wilson**: Teemu Selanne, stick violation
- **Trevor Graham**: PED’s in Track and Field
- **Chuck Blazer**: FIFA
- **Floyd Landis**: Lance Armstrong
- **Frank Splitt, Jon Ericson, Harry Edwards, William Dowling, Jay Smith, Murray Sperber** (all Drake Group honorees)
The Price Paid

- civil claims
- criminal charges
- social stigma
- termination or intimidation
- some are viewed as martyrs and heroes
- some are viewed as traitors
- some are seen as motivated by money
- some are considered liars or extortionists
Many people do not blow the whistle because of fear of retaliation, and also because of fear of losing their relationships at work and outside work, in addition to termination, suspension, demotion, and/or harsh mistreatment.

Following dismissal, whistleblowers may struggle to find further employment due to damaged reputations, poor references and blacklisting.

They may also suffer health consequences.
Solutions?

- Establish a whistle-blower policy?
- Establish a whistle-blower hotline just as SOX requires for accounting and auditing misconduct? [See, e.g., PCAOB: Public Company Accounting Oversight Board].
- Conduct whistle-blowing education and training?
DePauw University (Greencastle, Indiana): This policy prohibits retaliation in any form against an employee or student who in good faith reasonably believes and reports such alleged violations to the University’s attention.

However, any employee or student who knowingly makes false accusations of misconduct shall be subject to disciplinary action. This policy also prohibits retaliation in any form against an employee or student who participates in or otherwise assists with an administrative proceeding, judicial proceeding, or investigation under this policy by the University, the Audit and Risk Management Committee of the Board of Trustees, or government agencies.

Any employee or student who takes any actions whatsoever in retaliation against an employee or student of the University who has in good faith and with reasonable belief of a violation raised any question or concern or made a report under this policy shall be subject to discipline, up to and including termination of employment. Any employee or student who encourages others to retaliate also violates this policy and will be subject to such disciplinary action.
The University will investigate any reported violation of laws, regulations, policies, or procedures by a University official or employee. Anyone found to have engaged in such violations is subject to disciplinary action, up to and including termination of employment, subject to applicable University procedures. All members of the University community are expected and encouraged to report possible violations through appropriate University procedures published elsewhere or by contacting the Vice President supervising the university official or employee whose conduct is in question; however, anyone concerned about possible retaliation may use the special reporting mechanisms of this policy (“whistleblower reporting”).

Regardless of how the report of possible violations is filed, any concern about apparent retaliation for reporting a possible violation should be reported through the procedures outlined in this policy.
Whistle-blower Policy

- **Examples of reporting protections:**
  - A violation of a federal, state, or local law;
  - Fraud or financial irregularities;
  - Violation of any University policy;
  - Fraudulent financial reporting;
  - Forgery or alteration of any documents;
  - Unauthorized alteration or manipulation of computer files;
  - The use of University, property, resources or authority for personal gain or for non-University-related purpose except as authorized or provided under University policy;
  - Authorizing or receiving compensation for services not received or services not performed;
  - Requesting reimbursement for expenses not incurred;
  - Authorizing or receiving compensation for hours not worked;
  - Activities endangering the health and safety of others.
A hotline has been set up at Montana State University to make it easier for whistleblowers to submit anonymous tips if they suspect someone is committing fraud, harassment or other violations of laws, regulations or policies.

The new MSU Compliance Hotline is open to students, staff, faculty and the public at all four campuses, from Bozeman to Billings, Great Falls and Havre.

Leslie Taylor, MSU legal counsel, told about 30 MSU leaders that the hotline is recognized as a “best practice.” Hotlines are specifically mentioned in federal sentencing guidelines, to be considered when judges are considering sentencing for corporate criminals, according to Taylor.
Montana State

- It offers both a phone number and a website where people can submit tips.
- The flier lists several types of problems people may report, such as: fraud, waste or financial misconduct; NCAA rules violations; discrimination, harassment or handicapped access violations; unsafe working conditions, environmental or safety problems; data-privacy violations or malicious use of technology; and research misconduct.
- Academic matters involving faculty or students or for student conduct issues should still be reported to the provost’s office or dean of students.
- Public universities in Washington, California and Oregon already have such hotlines. Many use EthicsPoint.
- The policy would encourage people to make “good faith” reports of wrongdoing and would protect whistleblowers from retaliation by allowing disciplinary action, up to firing. It would also make clear that people making false reports or with “reckless disregard for the truth” would be subject to discipline, up to firing.
The Future

- To what degree should coaches, trainers, other employees become involved?
- Student-athletes?
- Recall in 1986, SMU faced allegations by two whistle-blower players, Sean Stopperich and David Stanley.
- How will whistle-blowing change in the age of social media?
Conclusion

- Blowing the whistle in and out of sports comes with a price.
- Whistleblowing is an individual decision with huge risk, but it may well be worth it.
- Lack of specific sport-related whistleblower protections have hurt people and college sports generally.
- NCAA and its member institutions should consider encouraging whistleblower protections through incentives rather than external governmental regulation.
Conclusion

- Require mandatory training on state/federal laws within athletic departments?
- Private penalties for retaliation?
- Compliance officers, faculty and others might better be seen as partners rather than villains.
- Social media might change the manner in which individuals blow the whistle.
Selected References

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- Richard Goldstein, *Jan Kemp Dies at 59; Exposed Fraud in Grades of Players*, N.Y. Times (Dec. 11, 2008), http://www.nytimes.com/2008/12/12/education/12kemp.html?_r=0