

Date Published June 2020

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Recommended Citation

Christensen, D. S., & Calvasina, G. (2020). Halliburton Whistleblower Tony Menendez - An Accountant with Moral Courage. *Mountain Plains Journal of Business and Technology*, 21(1). Retrieved from <https://openspaces.unk.edu/mpjbt/vol21/iss1/7>

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Halliburton Whistleblower Tony Menendez - An Accountant with Moral Courage

Cover Page Footnote

This case is developed solely as a basis for class discussions. The case is not intended to serve as endorsements or illustrations of effective or ineffective ethical responses.

HALLIBURTON WHISTLEBLOWER TONY MENENDEZ - AN ACCOUNTANT WITH MORAL COURAGE

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Success is not final, failure is not fatal; it is the courage to continue that counts².

ABSTRACT

This case describes the experience of accounting whistleblower Tony Menendez. It is both inspiring and cautionary. After failing to get the company to change its questionable accounting practices, Menendez had filed a complaint months earlier with regulators about the giant oil services company violating accounting rules. Halliburton's employees soon learned of his action. By presenting the resulting consequences of whistleblowing, this case illustrates a roadmap for blowing the whistle and identifies potential roadblocks faced by a whistle blower.

Keywords: quiet leadership; whistleblowing; moral courage; values; accounting; ethics

INTRODUCTION³

On a warm and sunny February afternoon in 2006, Tony Menendez and everyone else in the accounting department at Halliburton received an email from Mark McCollum, chief accounting officer and a top-ranking executive of the company.. The email announced that the Security and Exchange Commission (SEC) had opened an inquiry into allegations made by Mr. Menendez about an accounting impropriety and that everyone in the department was to retain their documents until further notice. The email set in motion for Tony a ten-year saga of trials and tribulations that few would choose to endure. If you were in Tony's position, what would you do?

Whistleblowing places the internal accountant in a difficult and dangerous position. It is hard to foresee a good outcome for the would-be whistleblower. When an internal accountant recognizes an unethical issue or behavior, ignoring it is not allowed. Instead, the accountant is ethically required to use the organization's internal whistleblowing process (if it exists) to resolve the issue. This often involves discussing concerns with supervisors, which may reveal the whistleblower's identity and damage reputations. If internal whistleblowing is unsuccessful, the accountant is then required to resolve the issue using other methods such as reporting to the SEC, which can be long and expensive, with no guarantee of success. If the external process is also unsuccessful, the accountant should consider disassociating from the organization. Regardless of the outcome, the organization may choose to retaliate with measures such as demotion or termination, and the accountant is labeled as a disloyal employee.

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3 Submitted: 13 Feb 2020; Revised: 1 Apr 2020; Accepted: 16 May 2020

Whistleblowing requires moral courage to voice concerns about potential unethical and illegal practices of the organization. Whistleblowing also requires tactful, well-considered internal communications with supervisors and others that do not polarize relationships and destroy reputations. In this case, you learn about the experience of Tony Menendez, an accountant at Halliburton, who expressed his concerns about an accounting impropriety to his supervisors and the SEC. Although the SEC promises anonymity to the whistleblower, it did not work out that way for Tony. Halliburton's retaliation launched Tony on a multi-year battle with the courts before vindication.

REQUIREMENTS

Read the description of Menendez's whistleblowing experience in "The Whistleblower's Tale: How an Accountant Took on Halliburton" (*Eisenger 2015*)⁴ Also read the "How to Blow the Whistle" in the appendix of this case. As you read these, consider the moral courage of Menendez and evaluate the whistleblowing process that he experienced. To help you develop moral courage and confidence in the whistleblowing process, write a short essay (double-spaced, 2-3 pages, 1-inch margins) that meets the following requirements:

1. Describe the moral courage of Mendez. Identify one or more principles or values in SEPP that were being challenged, the personal danger that Menendez faced for defending those principles, and his willingness to endure the danger. Explain your reasoning.
2. Evaluate Menendez's whistleblowing process. How closely did it match the steps recommended by SEPP?
3. Consider the communications between Menendez and his colleagues, including Chief Accounting Officer McCollum. Speculate on whether Gentile's Giving Voice To Values (GVV) method (2010) and Badaracco's Quiet Leadership strategy (2001) may have improved the internal whistleblowing experience. Provide at least one example of the GVV method or the Quiet Leadership strategy.
4. Identify at least one character trait displayed by Menendez that was useful in his whistleblowing process. Speculate on how this character trait may be developed.

⁴ <http://www.valuewalk.com/2015/04/halliburton-tony-menendez/?all=1>

APPENDIX

HOW TO BLOW THE WHISTLE

Moral Courage: principle, danger, willingness to endure

Given the potential for retaliation and the daunting legal process, the whistleblower needs moral courage. Moral courage is taking a stand to defend a personal value or principle that is at risk, despite the danger of doing so. Driving a Formula-One racecar in a Grand Prix race may require physical courage, but there is not likely any moral principle or value such as honesty or compassion involved. In contrast, when an employee chooses to blow the whistle on a corporation's unsafe or dishonest practices, the principle of safety or honesty is being defended, and the danger is often to one's career. Driving a racecar and whistleblowing both require courage, but the former requires physical courage while the latter requires moral courage.

In addition to defending a closely held value or principle, moral courage requires that some personal danger be involved in the defense of the value or principle, and a willingness to endure it. For whistleblowers, personal danger is often damage to one's reputation or career. The intersection of these three elements in a Venn diagram is often used to define moral courage (Kidder 2005).

Advice from the Institute of Management Accounting

Just as a road map can promote confidence to a traveler on an unfamiliar journey, knowing how to blow the whistle can encourage the would-be whistleblower to begin the whistleblowing process. The Institute of Management Accounting (IMA) provides the *IMA Statement of Ethical Professional Practice* (SEPP) to help its members behave ethically and resolve ethical issues. There are four overarching ethical principles (honesty, fairness, objectivity, and responsibility), and four standards that define ethical responsibilities (competence, confidentiality, integrity, credibility). Within each standard are numbered responsibilities.

In 2017 IMA revised the SEPP to include a new integrity standard: "Contribute to a positive ethical culture and place integrity of profession above personal interests" (IMA SEPP 2017). This new responsibility is significant because its members are now explicitly required to be actively engaged in creating and supporting the ethical culture of their organization.

The last part of SEPP is IMA's *Resolving Ethical Issues*. The member of IMA should follow the established policies of his or her organization. If no policies exist, the member should consider the following steps:

- The resolution process could include a discussion with the member's immediate supervisor. If the supervisor appears to be involved, the issue could be presented to the next level of management.
- IMA offers an anonymous helpline that the member may call to request how key elements of the *IMA Statement of Ethical Professional Practice* could be applied to the ethical issue.
- The member should consider consulting his or her attorney to learn of any legal obligations, rights, and risks concerning the issue.
- If resolution efforts are not successful, the member may wish to consider disassociating from the organization (IMA SEPP 2017)

Regarding the legal obligations referenced in IMA's *Resolving Ethical Issues*, the United States Government has a long history of attempting to encourage and protect whistleblowers. The False Claims Act of 1863 began the federal government's involvement in the whistleblower process. Congress has since enacted over twenty laws designed to encourage and protect whistleblowers.

The Sarbanes-Oxley and the Dodd-Frank Acts have particular relevance to accountants. The enactment of the Sarbanes-Oxley Act in 2002 on the heels of the Enron and WorldCom scandals focused on providing additional protection and incentives for whistleblowers to report questionable accounting and auditing practices. Congress, reacting to the 2008 financial crisis in the US, enacted the Consumer Financial Protection Act of 2010 (Dodd-Frank) with the goal to improve "accountability, resiliency, and transparency in the financial system" (McClurg 2017). According to McClurg, Dodd-Frank expands and builds upon previous whistleblower laws in three ways: "First, it increases the financial incentive for whistleblowers to come forward by requiring the SEC to award bounties. Second, it strengthens protections available to employee-whistleblowers from employer retaliation. Third, it provides whistleblowers with confidentiality protections" (McClurg 2017: 158).

Advice from Ethics Gurus

Gentile and Badaracco suggest that carefully communicating concerns to others is critical to achieving an acceptable resolution. Gentile (2010) suggests a method termed "Giving Voice to Values" (GVV), where whistleblowers carefully consider whom to contact, what to say, and when to say it. Similarly, Badaracco (2001) suggests "quiet leadership," where concerns are expressed privately and without moral outrage. A paraphrased summary of his advice follows:

1. Put off things until tomorrow. Take time to cool off. Strategically stall your response by saying, "I'll get back with you on that" or some other phrase that delays a potentially emotional, irrational response. Then look for ways to create a tactful response that does not embarrass others or polarize relationships.
2. Pick your battles. Some issues may not be of sufficient importance to risk your reputation or political capital. Before taking a stand on a difficult issue consider the potential cost to your political capital. As Badaracco writes, "political capital is the hard currency of organizational life. ... It is hard to accumulate and devilishly easy to dissipate" (123). Blowing the whistle on every minor indiscretion that you see may be like the person who cried wolf in Aesop's fable, and no one will listen to you when you voice your values about more important matters.
3. Bend the rules, but don't break them. Badaracco explains that "most of us don't associate bending the rules with moral leadership, but following rules can be a moral cop-out" (124). Almost everyone agrees that lying to the Gestapo about hiding Jews was morally acceptable because it accomplished a greater moral responsibility. "Instead of acting like moral bookkeepers, quiet leaders bend the rules and own up to their deeper responsibilities" (124).
4. Find a compromise. Some ethical issues are not clear right-versus-wrong problems but right-versus-right dilemmas. Badaracco explains that quiet leaders understand the moral imperative of always telling the truth, but they do not find it useful in some situations. They

see the gray between black and white, and let that vision help them discover a morally acceptable alternative (Badaracco 2001: 120-126).

To some management accountants, whose professional values in SEPP include honesty and responsibility, Badaracco's rules may seem like ignoring the ethical issue. For example, picking your battles to protect political capital or finding a compromise may feel dishonest and irresponsible. However, Badaracco's research suggests that resolving concerns with quiet leadership is more effective than an impulsive, ill-considered, public response.

Teaching Note for Instructors is available from editor-mpjbt@unk.edu