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Ethics Advising A Wells Fargo Whistleblower: A Story of Early Wrongdoing

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A Story of Early Wrongdoing

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In November 2011, the Episcopal Church Religious Education class engaged the topic of whistleblowing in a lesson on Christian ethics. A businessman in the group stated that blowing the whistle on ethical misconduct was easy. "Just report the unethical actions. What is there to it?" A retired Naval Officer under the alias of Mr. Andrews then asked the question: "Has anyone here ever blown the whistle on ethical misconduct at your work?" There was silence. No one had ever been a whistleblower. Mr. Andrews spoke briefly about the treacherous journey of being a whistleblower and the risks involved. He could speak from first-hand experience, having blown the whistle himself during his time in the Navy.

At the end of the Religious Education class, Naomi (not her real name) approached Mr. Andrews and asked to speak to him. Her questions resulted in an eighteen-month ethics advising relationship with a Wells Fargo teller. This was a pro bono case given her husband's failed business, and they could not afford an attorney. Mr. Andrews told Naomi that he was not able to give legal advice, but could give ethics advice on how to handle the situation. Naomi had never worked where her ethics were challenged to the degree she was experiencing. This was at a local Wells Fargo branch bank as a teller.

Naomi began telling her story of branch leaders disregarding banking procedures and protocols to ensure financial soundness and security. She was disturbed at the blatant and intentionally unorthodox operating style. "What do I do?" she exclaimed in frustration, "I can't just stand by and do nothing while watching this unethical activity occur!"

Mr. Andrews stated up front, "Naomi, being a whistleblower comes with risks. It is not easy! There is no moral courage without costs. You will not be a hero in this story. In fact, you will mostly likely become the pariah and could lose your job."

He listened and tested her motivation for being a whistleblower. Was there disgruntlement? Personal animus? Or was there a real ethical issue for her to deal with? Mr. Andrews quickly learned that she was faced with a legitimate ethics challenge. She asked what her options were, to which he replied, "You have three options, Naomi: 1. You can quit your job, 2. you can remain silent and endure it, or 3. you can take action by reporting the ethical misconduct." He explained the risks with each of the three options from unemployment in a time of financial need, having knowledge of misconduct and doing nothing about it risking employment, and being terminated for reporting the misconduct. Needing time to contemplate the choices and risks, the duo reconvened a few days later by phone.

The issue facing the teller was regular weekly cash deposits she received at her window that ranged between $8,000 and $9,500. Each week, an amount in that range was deposited to a New York bank account. The man would hand the same black bag with cash to the teller for deposit. Opening the bag always emitted the smell of marijuana. She sensed something was wrong about this regular, irregular activity. Mr. Andrews knew this activity was not in keeping with banking regulations.

When Naomi reported this irregular practice to the head teller, she was met with cool dismissiveness. She pressed the head teller on submitting a Suspicious Activity Report (SAR) on the subsequent transactions. The head teller told her, "That is unnecessary. Don't you worry about it. I'll take care of it." Naomi took the issue to the branch manager who dissuaded her from completing a SAR. Like the head teller, the branch manager said he would take care of things and for her not to worry about it.

Federal law requires that a SAR be submitted for irregular occurrence of cash transactions between $8,000 and $10,000. The bank branch manager and head teller were disregarding the law.

The next large cash deposit made by the same man on Thursday at the same time, Naomi took it upon herself to complete the SAR and submitted it online without the support of the head teller and branch manager. When Naomi mentioned to the head teller what she had done, the head teller told her angrily, "That is not the way we do things here. I told you I would take care of it." Naomi's actions put her in the crosshairs of the branch leadership.

The activity continued. Naomi was fearful of continuously receiving suspicious deposits and not reporting them. Again, she approached the branch manager. He told her that he would take care of things and she need not worry. The branch manager and the head teller began to question her work intimidatingly. It was clear that Naomi was not to question the suspicious large deposits.

Almost immediately, innuendos and veiled threats by leaders and other tellers began. This heightened the fear and stress factor for Naomi. She was frustrated at leadership and fearful of consequences. No one would listen to her.

Mr. Andrews later told her, "Naomi, you have responsibility to take this to higher authorities. It appears the head teller and branch manager may be on the take." This really frightened her. He suggested she call the Wells Fargo hotline, which she did. However, the hotline attendant challenged the veracity of her story. She didn't think they believed her.

Mr. Andrews had directed Naomi to take detailed notes and document everything that happened. Her manager began to intimidate her and her fearful stress increased. Yet, she chose to persevere. Mr. Andrews was in disbelief at the disregard for such blatant violations.

How does she get the attention of Wells Fargo leadership? After a lot of thought, Mr. Andrews called a close contact in the intelligence community and told him the story. His contact said it could be narcoterrorism: the selling of drugs in the United States to fund terrorism. Immediately, Mr. Andrews called a Drug Enforcement (DEA) friend, who put him in touch with the financial crimes unit.

Realizing that no one was paying attention to Naomi's concerns, Mr. Andrews' DEA contact decided the best course of action would be for Mr. Andrews to visit the Wells Fargo regional office. Upon arriving, he told the receptionist, "I needed to speak with the senior leadership. No one under a Vice President. Please take these three words to the senior leadership: Narcoterrorism, money laundering and criminal activity at a local Wells Fargo Branch."

She immediately went to the executive suite. A short time later, a Senior Vice President and an Executive Assistant came down. The officer told them Naomi's story about the cash deposits, the intimidation, veiled threats, and fear she was experiencing. As he spoke, they took copious notes. He had their attention. They promised to help and protect Naomi.

Naomi was put in contact with a very helpful Human Resources person. After a few weeks, she was handed off to another HR person who again questioned the veracity of her story. Frustrated, she continued to persevere.

Mr. Andrews' conversations with Naomi continued as he advised her how to deal with other emerging ethical situations. Some of them are what he might call red herrings to distract her from the main issue of money laundering. Vault policies were disregarded, leaving the security of cash at risk, and other procedural shortcuts were taken.

One day out of the blue, Mr. Andrews received an attention-getting email from the Wells Fargo General Counsel in Charlotte, NC. He accused Mr. Andrews of acting as an attorney for Naomi, threatening action against him. This was a moral challenge for Mr. Andrews. He had to evaluate his actions as ethics advisor. These questions popped into his head for rapid ethical analysis: Have I done anything wrong? Is this a threat to intimidate me from giving Naomi ethics advice? Do I back away from such a threat? Or do I defend my position as an ethicist to Naomi? Do I stand with this woman who has the courage to take a stand against Wells Fargo leaders?

After a nice introductory sentence, Mr. Andrews quickly wrote his defense, stating:

> In no way have I given any legal counsel. I am a PhD ethicist, not an attorney.
>
> Naomi has not revealed any names or personally identifiable information of Wells Fargo employees. She has only identified leadership positions, responsibilities, and questionable activities.
>
> As an ethicist, I have the right to advise her to bear moral judgment and responsibility not only for herself, but also as an employee for Wells Fargo.
>
> I am clergy (a retired Navy Chaplain), which allows her privileged communication along with the constitutional guarantee of free speech.

Mr. Andrews hit the send button. Almost immediately he received a response stating, "Thank you for assisting Ms. Naomi with the ethical complexities and for the interests of Wells Fargo." That short twenty-minute exchange was a test of Mr. Andrews' moral will. He chose to stand by Naomi and to stand for his profession as a practicing ethicist.

After a few weeks the police surrounded the branch. All staff were fired except for Naomi. Change was in place. Multiple individuals from another state were brought in by Wells Fargo to take control. Life had settled down. It was a victory for moral courage—or so they thought.

Cross-Selling

A few months later, Naomi called Mr. Andrews asking about other questionable activities occurring at the branch. She told him about employees opening accounts in customers' names without their consent.

Having been a banker in his early life, with two banking and finance degrees, Mr. Andrews was familiar with general banking protocol and procedures. Naomi's description and documentation of cross-selling were not in the best interest of the customers, nor Wells Fargo. Forging signatures, taking legal action without consent of the customer, opening multiple accounts under a name—it certainly did not pass the smell test. Mr. Andrews advised Naomi to collect evidence and document specific events. Once a week Mr. Andrews had breakfast with a group of executives, which included a regional bank ethics officer of a competitor bank. Without disclosing his ethics advising role, he queried him about policies, procedures, and protocols for opening accounts in customers' names without customer knowledge. Without question, the competitor ethics officer stated that it was "absolutely illegal to open accounts in people's names without their consent." Other issues of accountability were discussed. Mr. Andrews reported to Naomi his conversation with the bank ethics officer.

Naomi reported the unethical cross-selling to Human Resources. Again, they doubted her story and believed her to be a chronic whistleblower. Certainly, thoughts of "Is she imagining this," "perhaps she is confused, given it is unquestionably illegal," and "maybe the stress of whistleblowing and her financial situation is bearing upon her" crossed Mr. Andrews' mind. He informed Naomi that the pressure would build on her with another whistleblowing claim. She had better make sure she was right and have impeccable documentation. She persevered, and Mr. Andrews continued to persevere with her.

The new branch leadership team started passive-aggressive behaviors to intimidate, threaten, and weaken her will. Again, she and Mr. Andrews navigated the treacherous ethical landscape. Wells Fargo put pressure on her not to talk with Mr. Andrews even though they continued. Intimidation, veiled threats, and not-so-veiled threats increased by the local branch leaders. They also resorted to what Fred Alford in *Whistleblowers: Broken Lives and Organizational Power* calls "constructive discharge." What do you think constructive discharge means? Word had gotten to the new leadership and tellers that she was a whistleblower. She had "destroyed careers and ruined lives."

It became management's mission to engineer her departure with manufactured charges of misconduct, unethical actions, and procedural violations.

Naomi refused to standby and allow such unethical banking practices to take place.

The incredible stress and pressure along with sleepless nights and fear for her own safety bore heavily on Naomi and her family. She was tiring from the fight, relationships became strained, and the stress was continuing to mount. After some soul-searching, Naomi resigned her teller position from the bank.

This was the high-pressured cross-selling tactics that led to Wells Fargo's current state of affairs with the federal government and the public trust.

The cross-selling scandal. There was tremendous pressure for all employees to fill their daily quota to open new accounts. There were financial incentives for the regional, district, and branch leadership.

The intense demand was for the opening of multiple new accounts for existing customers. How was this accomplished:

1. Convincing customers of bogus benefits.
2. Warning customers of non-existent penalties if they did not open the account.
3. Opening accounts in customers' names without their consent or knowledge.
4. Committing outright deceit by lying to the customer in multiple other ways. Many victims were senior citizens.

This was one the most incentivized, creative, innovative, and systematic ethical misconducts the financial world had seen. It was the Wells Fargo culture of fraud. Bonus incentives, intimidation, and high pressure on managers and employees to get the numbers up appears to have been devoid of any ethical parameters.

Cross-selling banking products is a common marketing strategy for increasing profit and maximizing the customer relationship. Wells Fargo's cross-selling techniques were fraught with fraud. At the hands of Wells Fargo employees, customers suffered costly overdrafts and fees, bad credit ratings, loss of homes and other assets, not to mention a deteriorating trust relationship with Wells Fargo. Naomi had an elderly lady come to the branch to inquire about an unauthorized account. She took the customer's complaint to the manager. The manager told Naomi to lie to the lady. Naomi refused. The manager took it upon himself to speak with the lady and deceive her into opening an account. Some of the employees who reported the unethical behavior to Wells Fargo were met with more than skepticism. It was disbelief and denial.

After resigning, Mr. Andrews heard nothing more from Naomi about Wells Fargo from 2013 until September 2016, when the largest bank scandal of the year made big news. She emailed him: "This is what we were dealing with. Can you believe it!" The Wells Fargo massive consumer fraud was more than they ever imagined. They had thought it was only a local branch problem that had been swept under the carpet. Wells Fargo had swept it and many more under the carpet.

Wells Fargo, third largest bank in the United States, has been in the news for fraudulently cross-selling banking products and other illicit banking and unethical practices since. Both the United States House and Senate excoriated Chairman and Chief Executive Officer John Stumpf for the unethical practices of his bank. Mr. Stumpf has since resigned.

Was it the Wells Fargo culture that led to the fraud or just out-of-control high pressure incentivized selling techniques with no harm intended?

The Wells Fargo Fallout

- Fifty-three hundred employees fired over opening more than three million phony accounts.
- $185 million paid in fines.
- Millions of customers lost homes and cars, have ruined credit ratings, and damaged reputations.
- Allegations of opening accounts in the names of undocumented minority immigrants.
- Facing multiple lawsuits from customers, whistleblowers, and federal and state agencies.

The Wall Street Journal reported that dozens of employees blew the whistle on cross-selling fraud over the course of four years. Many of those stories match Naomi's story.

Ethics advising was important and beneficial to Naomi. It helped her to evaluate her own values, test those values, and examine the world through a new experience. Changing contexts required constant risk analysis. Decisions were left to her. Throughout the eighteen-month experience, Mr. Andrews had to revisit the objectives and where he and Naomi were headed. It required deep analysis, consulting with others, and ensuring that he was giving the best ethical advice.

Here are some questions that Mr. Andrews had to consider as an ethicist advising a whistleblower:

1. Do ethicists play a role in whistleblowing?
2. Are there ethics in whistleblowing that the whistleblower needs to consider?
3. When an employee decides to blow the whistle, are there ethical responsibilities on that employee with the bank?
4. Or is that employee free by any means to report the unethical behavior with the ends justifying the means?

5. How do I engage the whistleblower and other parties?

Realized in the Wells Fargo experience are some ethical whistleblowing axioms to be applied in most whistleblowing scenarios. Risk-Benefit Analysis is essential to a whistleblower's moves. Whistleblowing is not just about the employee and employer—it deeply concerns one's family. It is more than doing the honorable duty of reporting misbehavior. Motives and ends must be considered. There has to be a willingness to suffer ridicule and even be considered a pariah among colleagues and co-workers.

Takeways

Here are some points for ethicists to consider when advising whistleblowers:

1. Whistleblowing is a treacherous path that needs to be well thought out.
2. Point out the personal costs of whistleblowing. Are you taking the right risks for the right reasons? Risk relationships, income, retirement, benefits with children in college?
3. Question your client's motives for blowing the whistle.
4. Remain objective. Look at the different facets of the context and players.
5. Examine the effects whistleblowing will have on family and significant others.
6. Advise the whistleblower that she is not going to be the hero.
7. Differentiate between critical and small misconduct activities. Beware of red herrings.
8. Be aware of biases and changing context.
9. Empower the whistleblower with moral clarity and resources to make sound judgments.
10. Provide the whistleblower appropriate legal, psychological, and spiritual resources. Stress – develop ways of coping.
11. Maintain your own objectivity and professionalism while supporting the whistleblower.
12. Look for an opportunity to hand off the whistleblower to a competent, credible, and honest person of authority.

Ethicists do have moral authority to advise whistleblowers. Don't be intimidated by others exerting their power. Claim your moral authority even when challenged by others.

Note: Names have been changed to protect identities of individuals in this story.