

The Test Called Whistleblowing

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Introduction

Every life is a test but, in the workplace, few are tested more than whistleblowers. The act of whistleblowing is a comprehensive test of the whistleblower’s values, loyalties and above all their self-worth. The whistleblower who survives, survives these tests. This paper examines the test that is whistleblowing.

In my experience, whistleblowing consists of five tests. There are other characterisations, but I have found this to be the most useful in terms of survival. The tests are a test of values, a test of loyalties, a test of justice, a test of inversion and a test of self-worth. I will consider these tests seriatim. But, of course, the tests are experienced simultaneously.

Test of Values

Values, and the divergence of values, are the principal determinants of whistleblowing problems. No person becomes a whistleblower without some reference to right and wrong, fair and unfair, ethical and unethical. Whistleblowing is a test of values, of truth and fairness. It is not coincidental that most contemporary studies of whistleblowers identify them as more ethical, or at least more assertively ethical, than an average employee. The values that whistleblowers defend are often not easy to codify. They are

** When Matilda asked me to speak at this conference, she also asked me to reflect on my whistleblowing experience over ten years. That experience which is the background to this talk is summarized in my submission to the Senate Inquiry into Higher Education of 2001 (submission 91). This submission can be found at the website http://www.aph.gov.au/senate/committee/eet_ctte/completed_inquiries/1999-02/public_uni/submissions/sublist.htm.*

often principles of fairness that are not written into laws, statutes, and codes. That is one of the reasons why whistleblowing legislation is difficult to frame.

As a test of values, whistleblowing becomes a test of a culture. As many have recognised, only through cultural change will the attitudes to whistleblowers change. For example, in a recent address reported in the Kuala Lumpur Edge Daily, Enron whistleblower Lynn Brewer emphasized that the Sarbannes-Oxley Act was not sufficient to prevent big accounting fraud cases. The number of whistleblowing reports to the Securities Exchange Commission has increased from 6400 a month in 2001 (the year of Enron and the year before the Sarbannes-Oxley Act) to 40,000 a month in 2004. Brewer suggested that Sarbannes-Oxley was not deterring fraud. Legislation cannot change culture. Brewer alludes to the importance of non-financial information, such as governance, culture and fairness in compensation as being just as important as financial ratios in determining the future viability of companies. But most of this information is difficult to write down.

Why is this relevant to whistleblowers? Because whistleblowers have become the independent regulators of our corporate system, providing information that auditors do not provide. The Ernst and Young 8th Global Survey (2004) found that “Whistleblowing is second behind internal controls as most likely to detect fraud. It is more likely to detect fraud than internal audit, external audit, accidental detection, management reviews.” The Australian Compliance Institute Survey of 2004 concluded that “The idea of fraud being uncovered through the audit process is a myth. Less than 2% of fraud is uncovered through this means.” Whistleblowers do not have the conflicts of interest that auditors have. Whistleblowers are not encumbered by the complex systems that encumber auditors. They are the eyes and ears of the firm.

In many cases the information whistleblowers reveal pertains to values, values which relate to the systems that firms use. If the National Australia Bank had not had a system which allowed losses on foreign exchange transactions to be hidden through smoothing, there would not have been the need for two whistleblowers to blow the whistle on foreign exchange transactions in 2004. The whistleblowers who blew the whistle blew the

whistle on a culture within NAB, as much as blowing the whistle on more than \$400 million of fraudulent transactions. In simple terms, many whistleblowers blow the whistle on the systemic culture within firms.

In the cases I have been involved in, I have blown the whistle on a culture within universities that emphasizes money before standards, managerialism before education, revenue before accountability, reputation before propriety, and unfairness before fairness. Specifically, my whistleblowing has been a test of the following values.

- (1) That research funds in universities should be used for research and research infrastructure, not for discretionary use.
- (2) That financial and academic fraud is not acceptable in a university.
- (3) That universities should follow proper governance processes, in particular that university inquiries should be conducted openly and fairly.
- (4) That staff should have formal rights of appeal.
- (5) That all students should have the same entitlements.

Values are important to me. I could not have continued without values. I sense the same is true for most whistleblowers. Commonly, those responding to whistleblowers will try to dilute the importance of values. All the clichés are used; the problem is not black and white, there is a need to move on, it is a clash of cultures. The clichés are designed to dilute the importance of values, and to introduce relativity into problems where there is no relativity. In Australia, this is an effective tactic because Australia is demonstrably soft on white-collar crime. Australia is a country which specializes in rewriting the rules of corporate governance, where insider trading is not insider trading, fraud is not fraud, conflict of interest is not conflict of interest, bribery is not bribery, and transparency is not transparency. Australia is always rewriting the laws of corporate governance, but never prosecuting them. Whistleblowers are on the other end of the seesaw to the white-collar criminal. As the criminals go up, so whistleblowers go down. To understand what happens to whistleblowers, you need to understand what happens to white collar criminals.

So the whistleblower is tested first and foremost, in terms of their values. The values test is the simplest of the five tests. No whistleblower should ever relinquish their values, because it those values that determine who they are. The values which first led me to blow the whistle in 1992 are the values I hold today. But natural fairness is now more important to me than it was in 1992.

Test of Loyalties

Whistleblowing is also a test of loyalties, loyalties to colleagues, to the firm, to the society. In Australia, where loyalties are an important part of the culture, the whistleblowing problem becomes a major test. Myths like mateship, the fair go, and support for the underdog are rewritten in a whistleblowing problem. The whistleblower ceases to be a mate using a rule where the fair must go, and the dog (dobber, lagger, snitch, informer, whistleblower) must go under. Ironically, the whistleblower is seen as the betrayer of their colleagues and their firm, yet it is the whistleblower who is betrayed. In a recent paper co-authored with Jackie Johnson and Mark Holub at the University of Western Australia, entitled *The Necessary Illegitimacy of the Whistleblower*, we pointed to the negative correlation of the whistleblower and the firm. For the firm to survive, at least with its existing culture, the influence of the whistleblower must be minimised. The strategy is first to reduce the discretionary authority of the whistleblower, then minimise their decision making and then to ostracise them. Such a strategy will always test the loyalty of the whistleblower to their colleagues and to the firm.

Detachment, one of the foundations of Buddhism, is critical for survival in a whistleblowing problem. The whistleblower must become an observer as much as a participant in their own whistleblowing. Detached observation permits focus on strategy rather than conflict, and it is strategy that ensures survival. Many whistleblowers allow conflict, and the conflict of loyalties, to dominate their thinking, instead of the information which underscores their whistleblowing. Most whistleblowers find it difficult to detach. If conflict is embedded in the minds of a whistleblower twenty-four hours a

day, then those on whom they blew the whistle have won. Detachment determines survival.

The test of loyalties is one of the most difficult of tests. It is relatively easy to cede links to an amorphous entity like a firm. It is not so easy to cede links with colleagues with whom there are strong attachments. The whistleblower often must choose between values and friendship. It is not an easy choice. Whistleblowing exposes friendships more than most problems, and the whistleblower is often betrayed. It is not easy to accept the Judas experience, but accept it the whistleblower must.

Two principles can be used to overcome the test of loyalties. First, the whistleblower must recognise that they are simply invoking their professional responsibility as originally termed by Ralph Nader (1972). They are not playing God. They are not saints, heroes, villains or traitors. They are simply information providers. If whistleblowers are to be accepted, they will need to be accepted as information providers. It is the information which should be tested, not the whistleblower. Hence, no whistleblower should reassert their values. Their values should be obvious and don't need to be defended.

Secondly, if friends don't share or understand those values, their friendship is of little value. In every whistleblowing problem, the whistleblower is not the only one tested. All those around the whistleblower are tested. And it is the bystanders, the silent accomplices, that are most tested. The silent accomplices of the whistleblowing problem are the same silent accomplices who lived next to Auschwitz and pretended not to see. Is there any difference between the silent accomplices of Auschwitz and those of the Bundaberg Hospital? Only the cast has changed, but not the characters. Like all whistleblowers, I have experienced my set of silent accomplices; the auditor who prefaces his report as "Under direction of senior management", the colleague in tears at the thought of telling the truth to an internal inquiry, the senior administrator who did not intervene when he knew offices were being burgled. The silent accomplice is the key to a

whistleblowing problem. They are the key which unlocks the cancer of corruption, and allows it to propagate and prosper.

In observing the bystanders, the silent accomplices, a whistleblower can find strength. A whistleblower should always ask the question *Would They Like to Be a Bystander?* The answer is usually no. Loyalty to values is more important than loyalty to bystanders.

Test of Justice

The third test for a whistleblower is the test imposed by the justice system, a test where technicalities dominate truth, where the statute of limitations often runs out, and where the values of the whistleblower are of no material consequence. I remember a comment made after my settlement hearing in 1996 that “We’re sorry we couldn’t pay you more but we had to hide the payment from RMIT Council.” My problem had come the full circle. I had blown the whistle on lack of accountability, and it was in front of me again. In the justice system, pragmatic legitimacy invariably dominates moral legitimacy. For the whistleblower, moral legitimacy dominates pragmatic legitimacy.

In our recent paper *The Necessary Illegitimacy of the Whistleblower*, we discussed whistleblowing legislation, noting that

“There has been an explosion of whistleblower protection provisions in common law countries such as the US, UK, Canada and Australia, as well as in Europe, Asia and Latin America. However, the enforcement of these laws has not matched the legislative zeal. The negative correlation between the pragmatic legitimacies of the whistleblower and the firm ensures that whistleblower protection laws are difficult to enforce. It appears that the protection laws have been enabled principally to deter, not to prosecute. Indeed, an economic impact study of the US False Claims Act amendments by Stringer (1996), suggests that more than two-thirds of their impact is attributable to the deterrence of wrongdoing. The risk, of course, is that if whistleblowers believe in the laws, they may be encouraged to come forward and rely on the protections. One critic of whistleblower laws referred to such laws as ‘*The Good Citizen Elimination Act*’.”

Much has been written about whistleblowing legislation, and there have been many comparisons. Vaughin et al (2003) propose a model law of whistleblower protection against which whistleblower laws can be assessed. They emphasize seven principles of an ideal law, namely that it should

1. Focus on the information disclosed, not the whistleblower.
2. Relate to freedom of expression laws.
3. Permit disclosure to different agencies in different forms.
4. Protect any disclosure, whether internal or external, whether by citizen or employee.
5. Involve whistleblowers in the process of the evaluation of their disclosure.
6. Have standards of disclosure.
7. Include compensation or incentives for disclosure.

The most important principle is the separation of the information and the whistleblower. If information and not whistleblowers were tested, the need for protective legislation would be reduced. This is the principle which underscores anonymous whistleblowing services such as Your Call (Yourcall.com.au) and Stopline. Anonymous whistleblower services elevate the importance of the information disclosed, not the discloser, thereby reducing the need for whistleblowing protection

When it is connected to freedom of expression, whistleblowing becomes a right as well as a responsibility. Tom Devine (*Courage Without Martyrdom*) has expressed the view that the 1968 amendment to the First Amendment (Freedom of Speech), which gave first amendment rights to employees, became a turning point for US whistleblowers. An equally important decision of the US Supreme Court in March 2005 prohibits official retaliation against anyone in educational programs who blows the whistle on unequal treatment. The ruling of the Supreme Court effectively gives whistleblowers the same protection in the US — what is termed Title IX protection — as those protected against

racial discrimination. This gives a lead to the type of protection required in Australia, namely protection such as that offered under the Racial Vilification Act.

Permitting disclosure to different agencies weakens the monopolistic power of regulators. Whistleblowers often complain that the agency to whom they disclose whether ombudsman, auditor, corruption commission or merit protection agency, lacks independence. And there is usually no right of appeal. The monopoly power of the regulator is one of the main problems for a whistleblower. Regulators and the firms they regulate develop symbiotic relationships, relationships which the whistleblower undermines. The whistleblower assumes the role of an independent regulator and, too often, becomes a competitor to the regulator. A competitive regulatory model is required in Australia.

The need for uniform whistleblowing laws, across all jurisdictions and all types of disclosures, has never been greater in Australia. As I commented in my paper *Courage Without Mateship*

“The nationalisation of so many of our institutions and companies over the last 30 years is also relevant to whistleblowers. In areas as diverse as banking, in tertiary education and sport, we have gone national. Wesfarmers was once a West Australian company founded by Western Australian farmers. It is now a national company. However, our governance structures have not followed the national model. The James Hardie case is a national case, yet it is fought out of the NSW Supreme Court. Whistleblowing legislation has followed state jurisdictions. We should have national uniform whistleblowing legislation. Instead, we have a patchwork quilt of different state legislations.”

Uniform whistleblowing laws which protect disclosures, whether internal or external, whether by citizen or employee, were implicit in the recommendations of the first Senate Inquiry into Public Interest Whistleblowing, and have been the common refrain of whistleblowers ever since. When information and not the whistleblower is tested, and

when whistleblowing laws are uniform, standards of disclosure and their evaluation become more important. An Australian standard for disclosures and the evaluation of disclosures is now required.

The issue of compensation for whistleblowers is more contentious. In January 2004, for example, I wrote an opinion article in *The Age* entitled *How Australia Should Fight White-Collar Crime* arguing the case for the US False Claims Act. The False Claims Act provides compensation for whistleblowers. *The Age's* editorial two days later *Protect, Not Pay, Whistleblowers* examined the False Claims Act but concluded that

“Enticing whistleblowers by monetary rewards seems morally repugnant and runs the risk of attracting maliciously based information or tainted evidence of suspect credibility. It would be better to try to counter the anti-dobbing culture ingrained in many organizations and offer effective protection to whistleblowers who volunteer vital information in cases of corporate malfeasance, official corruption or criminal conspiracy.”

The sentiments of *The Age* are laudable in a perfect world. But, for a whistleblower, Australia is not a perfect world. There has not been a single prosecution for retaliation against a whistleblower under any Australian jurisdiction. In Australia, it is the whistleblower who pays, and continues to pay despite more than a decade of legislation. It is surprising that compensation for whistleblowers should be so opposed. The False Claims Act often elicits negative sentiment, principally because it is effective. As I noted in *Courage Without Mateship*

“A group of 22 US firms, ‘the fraud lobby’, launched a campaign in 1993 to emasculate the False Claims Act, a campaign which continues to the present time. As Senator Grassley, Chairman of the US Congressional Committee on Finance observed ‘They hate the Act because it is very effective at exposing their fraud.’ There has been no campaign against Australian legislation.”

In our recent paper *The Necessary Illegitimacy of the Whistleblower*, we discussed the False Claims Act.

“The most powerful act in the United States to protect whistleblowers is the False Claims Act, which was strengthened in 1986 to include provisions to protect whistleblowers. The False Claims Act has four features which help to repair the pragmatic legitimacy of whistleblowers. First, under the False Claims Act, a whistleblower can initiate a lawsuit against a fraudulent claimant on the government. The lawsuit can be pursued individually or jointly with the Department of Justice. The involvement of the Department of Justice imparts both moral and pragmatic legitimacy to the whistleblower. The Department of Justice becomes a conferring entity. Secondly, in a False Claims lawsuit, the onus of proof is placed on the firm, not the whistleblower. The balance between the pragmatic legitimacy of the whistleblower and the firm is restored. Under other whistleblowing laws, it is the whistleblower fighting for their legitimacy. Thirdly, the False Claims Act entitles the whistleblower to share between 15 and 30 percent of the funds recovered by the government. The whistleblower's pragmatic legitimacy is linked to fraud recovery. Finally, the whistleblower is protected from retaliation.

“The False Claims Act is the only whistleblowing legislation which repairs the pragmatic legitimacy of the whistleblower. And it is very effective. In 1985 before the Act was amended, fraud recoveries amounted to only US\$26 million. Since 1986, more than US\$6 billion has been recovered in nearly 4000 False Claims Act cases in the US. Annual fraud recoveries now average more than US\$1 billion, or nearly 50 times the rate before the Act was amended. The average recovery per case has been over US\$7 million, and the average amount to whistleblowers 18 percent of the cost recovery. More than 30 US states now have their own False Claims Acts. The False Claims Act works because the whistleblower is given the legitimacy required to root out corruption. Other whistleblowing laws, such as those in Australia, do not work because they do not legitimise the whistleblower.”

An Australian False Claims Act would confer substantial economic benefits. In 1996, in a US study commissioned by Taxpayers Against Fraud, William Stringer estimated the annual economic benefit of the False Claims Act, both in terms of fraud recovery and fraud deterrence, to be more than \$20 billion. Applying similar assumptions to Australia suggests that the annual economic benefit of an Australian False Claims Act will be at least \$1 billion. If for no other reason than economic, Australia should be considering uniform False Claims Act legislation.

The seven principles of Vaughin et al (2003) are appropriate to protect whistleblowers against visible retaliation, but they do not address the less visible retaliation. In response to legislation, the targeting of whistleblowers has become more precise and more subtle. In a study of US whistleblowers, Alford (2001) found that

“The average length of time between blowing the whistle and being fired was **about two years**. Little of this time was taken up with appeals. Rather, most time was spent waiting for time to pass until management could adequately disconnect the act of whistleblowing from the act of retaliation.”

Legislation induces firms to put whistleblowers on the slow rather than the fast drip. The career path of the whistleblower is still capped, the effects on their health are still deleterious, but their ability to seek legal redress is reduced. They are slowly extirpated from the firm. This is the contemporary face of whistleblowing where whistleblowers continue to work in the firm where they blew the whistle until the minimisation and ostracism forces them out. Legislation cannot address this problem. Only a change in culture can.

There are, however, three further legislative measures which need to be considered. First, whistleblowers often run out of time. The statute of limitations limits whistleblowers, particularly in systemic whistleblowing cases. Even under the US False Claims Act, whistleblowing cases can take years to be processed. In the paper *The Necessary*

Illegitimacy of the Whistleblower, we referred to the case of James Alderson, the Chief Financial Officer of North Valley Hospital, who blew the whistle on the secret accounting practices of the Quorum Health Group. As we noted in the paper

“He could not have anticipated the consequences of his action. Within five days he was sacked, within three years he had filed a whistleblower lawsuit under the False Claims Act, and in the next ten years his family lived in five different towns. Thirteen years after blowing the whistle, his case was settled. In the interim, the Hospital Corporation of America, the parent company of Quorum, had reimbursed the US government US\$840 million as a result of the whistleblower law suit.”

The sixteen cases examined by the Senate Inquiry into Public Interest Whistleblowing Revisited also showed how convoluted were the paths of whistleblowers. The Statute of Limitations in whistleblowing cases must be extended to allow cases to be resolved.

Secondly, whistleblowers not only receive retaliation, they are blacklisted. Blacklisting affects employment opportunities in other firms, and affects their ability to establish other careers. I return to an earlier point. Should not whistleblowers be given protection similar to Title IX protection in the US, that is, those protected against racial discrimination? Employment law which protects employees against discrimination based on gender, race, and belief, should extend to protect whistleblowers as an identity.

Thirdly, there is the question of the bystanders. Should not the bystanders, those silent accomplices who observe but do not disclose wrongdoing, be legally accountable? Encompassing legislation which penalises miscreants, protects whistleblowers and deters bystanding is needed.

The inversion that whistleblowers experience in the justice system can itself be inverted by credible whistleblower laws which are credibly enforced. An Australian False Claims Act would be a good start. But clearly, the Statute of Limitations, blacklisting and bystanding need also to be addressed.

Test of Inversion

For the whistleblower, the test of inversion is the greatest test of all. The whistleblower's life inverts. The insider becomes the outsider, unfairness replaces fairness and ostracism replaces mateship. The most important inversions for the whistleblower relate to judgements given against them, to their inverted career path and to the targeting of them.

Inversions in Australia are common because the rule of mateship supersedes the rule of law, technicalities supersede truth, and unfairness supersedes fairness. Whistleblowers know this inversion only too well. But occasionally, others gain insights. The failure to prosecute director Steve Wizard for insider trading was a case in point. For most commentators, the case was clear. The failure to prosecute Wizard was an inversion. Australia's insider trading laws are often characterised by legislators and regulators as the toughest in the world, yet there have been only seven prosecutions in thirteen years, just as there has never been a prosecution for retaliation against a whistleblower.

Whistleblowing laws and insider trading laws have one factor in common. They are window dressings.

Judgements against whistleblowers are common. In 1993, a number of colleagues and I appealed to the Visitor of RMIT regarding our case at RMIT. The Visitor is the person to whom members of a university appeal the internal decisions of a university. The Visitor is the Governor of the State in which the university is located and the Visitor's role is clearly prescribed in Section 43 of the RMIT Act of 1992. The Governor appointed the Chief Justice of Victoria in November 1993 to hear the matter. The appeal proceeded by correspondence, without any formal hearing. After more than 400 days, in February 1995, the Chief Justice determined that we had no right of appeal. The reason was that in Section 4 of the RMIT Act, the University was defined as a body politic and corporate consisting of a Council, the enrolled students and members of the academic, teaching and other staff prescribed by statute. RMIT had not prescribed a statute conferring membership to the staff. The University then consisted only of a Council and students, not the staff. The staff were thereby denied the right of appeal to the Visitor.

The absurdity of the Chief Justice's decision appalled me. It had taken him 443 days to determine that the University did not consist of the staff. As the Senate Committee into Public Interest Whistleblowing Revisited commented

“It does not reflect well on RMIT that it had not fulfilled its obligations and ensured that it had made the necessary arrangements under its Act to prescribe staff as corporators of the University. By not doing so, it denied a right of appeal to the Visitor by its staff and by coincidence, prevented an independent investigation of the matters complained of.”

One month after the Chief Justice's decision, the statute conferring membership for the staff was prescribed by RMIT. I initiated a separate lawsuit through the Supreme Court and obtained a settlement later that year, principally because of the Senate Committee's findings and an affidavit from a former Dean at RMIT. The Chief Justice's decision was a turning point in my life. Aside from the monetary cost of the appeal to the Visitor, the absurdity and unfairness of the Chief Justice's decision represented a significant inversion for me. It showed me that truth and fairness were not important in Australian jurisdictions, and this was a jurisdiction presided over by the Governor and Chief Justice of Victoria. My view of Australia inverted.

Since the Chief Justice's decision, there have been many other inversions for me, pertaining to a range of decisions made by those in authority. Many of these decisions are summarized in my submission to the Senate Inquiry into Higher Education 2001 (submission 91). The inversion test is the most difficult of tests, because it tests inherent values. In general, I have found the words of Mohandas Gandhi the most useful in dealing with inversions

“There is a higher court than the courts of justice and that is the court of conscience. It supersedes all other courts.”

The whistleblowing problem not only tests the whistleblowers and the bystanders. It also tests those who judge the whistleblowers. They too will be judged.

For the whistleblower, the most costly inversion relates to their career path. In 1995, Jean Lennane introduced the concept of the gap between the career path of the whistleblower and those on whom the whistle is blown (the respondent). This gap is summarized in the diagram below.

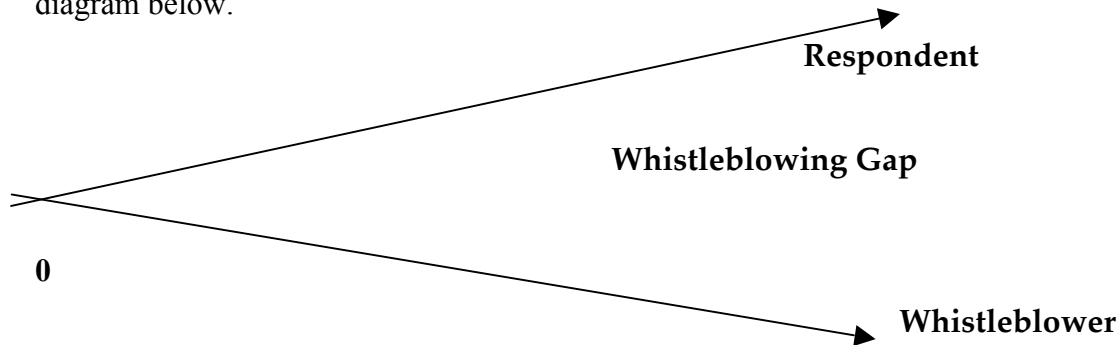


Figure 1: The Inverted Yield Curve of the Whistleblower

The whistleblowing gap measures the difference in career paths between the whistleblower and the respondent after the whistle is blown at time 0. Figure 1 shows that the typical whistleblower experiences an inverted yield from blowing the whistle, at least relative to the respondent. In general, we expect the gap to be greater the more corrupt the firm, so that the whistleblowing gap represents a simple measure of corruption.

Most whistleblowers become targets. Targeting is one of the most difficult inversions for a whistleblower. In my submission to the first Senate Inquiry on Public Interest Whistleblowing, I described it as

“The whistleblower identifies the cancer, attempts to remove it, and then is attacked by it...The whistleblower must at all times behave honourably; the cancer can behave as it likes, it has all the power.”

The targeting of whistleblowers is usually precise, nearly invisible to others, and almost always admits alternative explanations. I have experienced most forms of targeting including burglary of my office, surveillance by a private detective, harassing phone calls, harassment at home. There is an almost limitless number of possibilities for those who target whistleblowers. To illustrate, in 1996 when I supported the call for a Royal Commission into the National Crime Authority over the Mick Skrijel case, I experienced precise targeting. Our organization was under surveillance at that time. One night after a whistleblower meeting, the attendees adjourned to a nearby restaurant. We arrived in the twilight and left three hours later. When we returned to our car, the headlights were on. A mobile phone sat on the front seat untouched. The car started immediately. It was inconceivable to me that I had left my headlights on. It was even more inconceivable that the car would start after three hours with the headlights on. A mechanic confirmed this the next day when he tested the car battery. The lights would only last one hour. Evidently, someone had broken into my car, turned the lights on, but not stolen the mobile phone. It was harassment, the type of precise harassment which whistleblowers experience. But it could never be proved.

There was further harassment at the 1996 conference of Whistleblowers Australia which I helped to organise. In the last hour I left the conference room to type a press release. I had left a box with \$25 in cash, some cheques and the list of registrants for the conference under a table in the room. Fortunately, most of the cheques for the conference had already been banked. When I returned to the room, the box was missing. I reported it to the police. Two months later in August 1996, John Elliott was acquitted in a case initiated by the National Crime Authority. He called for a Royal Commission into the National Crime Authority, but for different reasons from our call for a Royal Commission. The next day I received a letter in my post office box. It was sent the previous day. It contained the missing cheques, \$25 in cash, but no list of registrants. The harassment was again precise. The targeting of whistleblowers is a mind game, designed to weaken their credibility and their ability. And, it is usually successful.

In 2002, I gave a public lecture on whistleblowing in Melbourne. The next day, I received a letter from one of my detractors. It is given below as an illustration.

Private and Confidential

To: Dr Sawyer

The thesis you attempt to develop in your talk is founded, and founders, on the maintained assumption that anyone annexing the title of “whistleblower” is a seeker after honesty, truth, justice — and not someone with baser motives. Malevolent, misguided, manipulative individuals can also assert that they are whistleblowers and use techniques of deception, deceit, half-truths, allusion etc to pursue their personal agendas. Not surprisingly, the predictions of your thesis about the treatment of such individuals and attitudes towards them can be expected to follow in that case. The danger for society is that it takes time and information to distinguish between the two types of individuals — with much cost to organizations and individuals along the way.

The “evidence” you produce in support of your thesis does not meet the standards I would expect of a true academic. Selectivity, personal opinion, inference of causal relationships from correlation, reliance on opinions of “independent experts” who have been provided with only partial (mis)information (and thus make a conditional statement), unwillingness to recognise the merits of conclusions of others with superior information and an unbiased, independent, perspective, are among the criticisms I could make. However, since I have previously made similar comments in my submission to the Senate Inquiry, and they are reiterated in the RMIT submission which I found most informative, I won’t pursue that issue here.

I will, however, note that dressing up personal issues and presenting them in public forums in the guise and style of “academic work” stretches the bounds of “academic freedom” beyond credibility. I find it personally and professionally abhorrent when individuals misuse and distort concepts such as “tenure” and “academic freedom” to achieve their own personal agendas.

Finally, your claim that actions such as yours are responsible for achieving good outcomes is laughable. It strikes me as akin to a drunken driver, responsible for the death of another, claiming responsibility for a subsequent change to the road rules resulting from the publicity occasioned. Malevolent means do not justify unintended ends.

This letter provides a number of insights into targeting. First, the writer of the letter heads the letter as Private and Confidential. Presumably, this is designed to prevent its circulation. The writer apparently believes that they can disparage the whistleblower, and then protect themselves by heading the letter Private and Confidential. Secondly, the letter reveals much of the hatred felt for me as a whistleblower. In the writer's mind, I am a person who is variously malevolent, malicious, manipulative, misguided, deceitful and "akin to a drunken driver, responsible for the death of another."

I learnt much from this letter. It showed me, for example, that one of the strategies for those who target whistleblowers is to introduce the concept of the good whistleblower and the bad whistleblower. As I wrote in *Courage Without Mateship*,

"The good whistleblower is the whistleblower who lives in another country, or who works for another firm (preferably a competitor), or who blew the whistle 50 years ago. The bad whistleblower is the whistleblower in your own firm who blows the whistle now."

The inversion that a whistleblower faces is the hardest test of all. They have absurd judgements given against them, their career path inverts and they are targeted. The cancer has turned on them. No whistleblower can ever fully accept their inversion. All whistleblowers hope and expect that their inversion will be inverted.

Test of Self-Worth

And finally I turn to the test of self-worth which all whistleblowers must eventually confront. The tests of values, of loyalty, of justice and of inversion distil to a common test of self-worth. How do whistleblowers value themselves?

When I teach finance, I introduce students to the value of an asset which is usually defined by

$$V_{i,t}^* = \sum_{s=1}^{\infty} \frac{E(CF_{i,t+s})}{(1+R)^s}$$

where $V_{i,t}^*$ is the value of asset i at time t , $E(CF_{i,t+s})$ are the expected future cash flows that accrue to the asset over an infinite lifetime ($s=1, \dots, \infty$) and $(1+R)$ is the discount rate applied to those cash flows. In simple terms, the worth of an asset is given by how much real money it will generate over its lifetime. That is, valuing a house is the same as valuing all the rents that the house can generate in the future, valuing a stock all the dividends it can generate in the future, and valuing a mineral resource all the royalties that it can generate in the future.

But what about valuing a person? Valuing a person is, of course, an absurdity. We all contribute in many dimensions. The value of a person is inestimable, and it is certainly inestimable while they are living. Finance would have ascribed very low valuations to Jesus, Lincoln, Van Gogh and Mozart while they were alive. Perhaps, with the benefit of hindsight, they are valued differently today. This may be the story of the whistleblower. Whistleblowers are long-term contributors in a short-term world. Our contemporary civilisation, which elevates celebrity over the common good, implicitly values a person, not by their long-term contribution, but by their short-term wealth. The whistleblower, whose wealth is often restricted and whose contribution is usually long-term rather than short-term, is not highly valued by such a civilisation.

The valuations of others inevitably affect the whistleblower's assessment of themselves. It is difficult to value yourself highly when others have written you down, if not written you off entirely. But, just as in the other tests, the whistleblower must discount the values and judgement of others. The test of values by which they became a whistleblower underwrites their own value. Their values define their value.

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