

CHAPTER 4

Don't Blow the Whistle!

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Tell the truth and run!—Yugoslav proverb

Introduction

In 2023, Richard Boyle had a major setback in his legal case. He had been charged with various offenses and was facing a prison term of many years.

Boyle was a whistleblower. He worked in the Australian Tax Office (ATO) in the state of South Australia and discovered oppressive debt-recovery practices that were crippling small businesses. After this shady practice was revealed, the ATO stopped it—and it fired Boyle and took him to court. This was the first major test of the Australian federal government's whistleblower protection law. Boyle had done everything by the book. He first reported his concerns internally and then to the tax ombudsman. When nothing was done, he went to the media, as the

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law provided. It was the media attention that pressured the ATO into changing its practices, but ATO management went after Boyle anyway.

Boyle, in collecting information showing what the ATO was doing, had broken various regulations, for example, concerning confidentiality, but he and his lawyers thought this was protected by the whistleblower law. The judge ruled otherwise, saying that the law only explicitly protected the disclosure itself but not collecting information beforehand. The ruling basically meant the whistleblower law was useless (Ferguson & Meagher, 2023).

Boyle, like so many others who report wrongdoing, trusted the system, and the system failed him. A common scenario is that an employee sees something wrong and simply reports it to the boss. Then, rather than investigating the matter and fixing any problem, the focus turns on the employee, who is targeted with a range of adverse actions such as ostracism, reprimands, and dismissal. Speaking out is followed by reprisals.

Since the 1990s, I've been active in Whistleblowers Australia, including as president and vice president. The organization is made up of volunteers, most of them whistleblowers themselves, who offer information and advice to whistleblowers, but do not advocate on behalf of individuals. In this role, I've talked with hundreds of whistleblowers. Their common story is that they speak out about a problem and then suffer reprisals. Shocked, they search for justice by going to various others in the system, including human resources units, upper management, boards, ombudsmen, anti-corruption bodies, auditor-generals, politicians, and courts. Most commonly, none of these provides useful assistance and sometimes they make things worse.

Those who approach Whistleblowers Australia are not a fair sample of whistleblowers because they do not include those whose disclosures were dealt with promptly and effectively. In contrast, many who contact us have already suffered reprisals and unsuccessfully sought assistance from official bodies, turning to us in desperation. Nevertheless, their stories are strikingly consistent, and much the same in a wide range of occupations. We have been contacted by civil servants, corporate employees, teachers, doctors, soldiers, and church members.

As a result of this experience, and reading widely about whistleblowing and suppression of dissent, I developed a perspective different from the standard view held by the government and the media (Martin, 2013, 2020, pp. 13–80). This standard view is that the solution is whistleblower protection, enforced through the law, and the resulting preoccupation

is with passing better laws and regulations to protect whistleblowers. I concluded that this approach, while well-meaning and offering some improvement, is illusory. The trouble is that whistleblower protection usually doesn't work, while other options, with greater promise, are neglected.

In the following, I first describe how blowing the whistle in the usual way, openly making a disclosure to those in authority, is usually disastrous for the whistleblower and for their goal of addressing wrongdoing. Next, I explain *why* whistleblower protection fails and *how* it fails. After this, I look at several other options, especially leaking. Looking at the why and how of whistleblower protection failure helps explain why, after decades of trying to protect whistleblowers through laws and formal procedures, more effective options are denigrated or ignored.

DISASTER FOR WHISTLEBLOWERS

My focus is on serious problems at work, especially one implicating higher management, including systemic corruption, abuse, and hazards to the public. Speaking out about such problems is, all too often, disastrous—for the employee who speaks out. The initial response may seem to be indifference or even diligence, but it's what happens next that really matters: reprisals, obvious, or subtle. In some dramatic cases, the employee is summarily fired and marched out of their workplace. Most employers use a more gradual process. It can involve spreading rumors about poor performance, sexual deviations, conflict of interest, or any number of other issues. Often associated with rumors is ostracism, in which managers and co-workers shun the employee. This might seem like a small problem, but actually, it is one of the hardest to handle emotionally because relationships are so central to wellbeing. There's also petty harassment, for example, assigning inconvenient shifts, not being invited to meetings, not providing proper tools, assignment of work that is too difficult, too easy or unneeded, and assignment to undesirable work teams. Then there are reprimands, punitive transfers, referral to psychiatrists, blocking of promotions, demotions, dismissal, and blacklisting (e.g., Glazer & Glazer, 1989; Miceli et al., 2008; Mueller, 2019).

Some whistleblowers are lucky and do not suffer reprisals or even are rewarded for making disclosures. Reprisals are more likely when the wrongdoer is a senior figure, when the wrongdoing is more serious, and when the organization does not have strong confidentiality protocols (Brown et al., 2019). However, even in seemingly low-risk situations, it is sensible to prepare for a bad outcome, which often is far worse than anticipated.

What workers would put themselves through the ordeal that so often follows whistleblowing? A few know what is coming but many do not. Many conscientious employees report problems in good faith and are shocked when they are targeted, an experience that can destroy their belief system (Alford, 2001). Others anticipate problems but feel that they cannot keep silent and be okay with themselves; they just don't realize how bad things can become.

Reprisals often cause serious damage. They can lead to loss of income, health problems, and breakdown of relationships (Lennane, 1993). Reprisals are a primary reason why whistleblowing is often a disaster for whistleblowers. But there's more.

In many cases, the focus is on the whistleblower and not on what they spoke out about. People hear more about Chelsea Manning and Edward Snowden than they do about their major disclosures. Julian Assange is not a whistleblower but rather a journalist, but there are more media stories about him than about revelations in WikiLeaks. The lesson is that, in many cases, making a disclosure and revealing your identity turns the spotlight from the disclosure to you.

Yet another problem with whistleblowing is that formal protections hardly ever work. William De Maria led a study in which whistleblowers were asked about the agencies they had approached and whether these agencies were helpful (De Maria, 1999; De Maria & Jan, 1996). Less than one out of ten approaches was helpful, and some were harmful. Sometimes whistleblowers make reports to anti-corruption bodies, which then refer the matter to the employer, enabling reprisals to be targeted. My conversations with whistleblowers accord with De Maria's findings. My reading of numerous whistleblower cases from other countries gives the same message: whistleblower protection is usually an illusion. It is a dangerous illusion because employees think they are protected when actually they aren't.

When an employee speaks out, the wrongdoers in the organization are warned: someone is on to them. As well as attacking the whistleblower, they can destroy evidence, establish cover stories and take measures to prevent others from discovering their actions. For this reason, whistleblower advisers regularly recommend collecting large amounts of incriminating evidence before speaking out (Devine, 1997; Martin, 2013). The opportunity disappears after the whistle is blown.

Reprisals can be incredibly damaging to the whistleblower but there is another effect of reprisals—on other employees. When one person speaks out, sometimes others are emboldened to join them. But when they witness reprisals against the whistleblower, most want to avoid a similar fate, so they keep quiet. The prosecution of Richard Boyle can be seen in this light. In the US, some national security whistleblowers have been imprisoned and many others threatened with prison under espionage laws, often a more severe treatment than suffered by those actually involved in espionage (Edmonds, 2012).

There are so many disadvantages to whistleblowing that it is difficult to justify doing it, except for the importance of exposing wrongdoing. That may make the sacrifice worthwhile, sometimes to the whistleblower and usually to society. Yet there is another problem: whistleblowing usually doesn't work. The wrongdoers are not punished and the system of corruption continues. In listening to hundreds of whistleblowers tell about their experiences, cases of unmitigated success are rare. In nearly every case where disclosures lead to change, the crucial factor is publicity, in the media or throughout the organization. When Richard Boyle reported malpractice in the Australian Tax Office, nothing happened. It was only when the media reported the story that action was taken to stop the malpractice. If publicity is a key to having an impact, why do nearly all whistleblower laws and systems require or encourage employees to initially make disclosures internally? One answer is that these systems are designed to control whistleblowers and what happens with their disclosures.

WHY WHISTLEBLOWER PROTECTION FAILS

Whistleblower laws were first introduced in the United States in the 1970s. Lawmakers have repeatedly strengthened the laws, yet despite these noble efforts, whistleblowing remains a hazardous activity (Vaughn, 2012). This lack of substantial progress suggests something deeper is at play.

Here is one way to understand the failure of whistleblower protection, at a general level. Anyone who probes into the practical realities of

systems of political and economic power can discover that at the highest levels, there is substantial corruption, often deep-seated (Reisman, 1979; Ross, 1995; Sorokin & Lunden, 1959). Whistleblower stories provide one insight into this. Research supports Lord Acton's saying that "Power tends to corrupt, and absolute power corrupts absolutely" (Keltner, 2017; Kipnis, 1976).

Systems of power include economic inequality, imprisonment, discrimination, and police power. Can anyone imagine that a single witness to corruption, a single truth-teller, can undermine this edifice? This would mean that a single employee could bring down company owners and managers or remove political leaders from their positions. A superficial observation shows this does not happen. It is implausible that politicians, who rely on business leaders for their support, would set up a disclosure regime that could bring the entire system crashing down.

Anthony Evans (2008), drawing on a framework developed by anthropologist Mary Douglas, argues that when whistleblowers speak out, they are behaving as if the organization is egalitarian, open to a dialogue between equals. But most organizations are hierarchical, with subordinates under the control of superiors, so dissent is seen as treachery. In this framework, whistleblower laws, watchdog bodies and courts are themselves hierarchical bodies assigned the task of addressing a challenge to hierarchy. According to Evans' analysis, whistleblower protection is flawed because it leaves intact systems of unequal power.

Deena Weinstein (1979), in an analysis of the system of organizing work called bureaucracy, likened this organizational form to an authoritarian state. In a bureaucracy—this includes corporations, government departments, militaries, churches, and most other large organizations—orders are given from the top, and subordinates are expected to obey. There are no elections. There is no free speech (Anderson, 2017; Ewing, 1977). Opposition movements with the capacity to take power are banned. Unions have a degree of countervailing power, but not to take over management or institute workplace democracy. In this context, a whistleblower is like a lone dissident, standing up against the might of the regime with only truth as an ally. To take the analogy further, whistleblower laws are like the noble statements posited in the constitutions of repressive regimes, promising freedom but in practice only allowing submission.

How Whistleblower Protection Fails

Employers have enormous power. When employees have some nominal rights, there are usually ways to nullify them. As already mentioned, workers can be subject to a wide range of reprisals. Only a few of them are blatant challenges to laws. To begin, employers never say they are penalizing a worker for blowing the whistle: the reason is always something else, usually, some deficiency of the worker such as poor performance, harassment of co-workers, misuse of information, or mental illness, and many employers sincerely believe their rationales for retaliation. Every worker has some shortcomings, and these can be exaggerated, taken out of context and used as a pretext for adverse actions. In one case, an Australian high school teacher complained about a racist comment by her principal. Although she had not been informed of any problems with her teaching, during the complaint processes she was accused of incompetence and other shortcomings (Anon, 1997).

Even if there is no valid evidence against an employee, it can be manufactured, for example, by forging documents. Another possibility is revealing private information, such as about health, which can be distressing and damage relations with co-workers. Just as potently, the targeted employee is condemned for violating official policies, although these are routinely flouted by all workers to get the job done. A double standard is applied: those who acquiesce are left alone whereas challengers are targeted.

One way to dismiss a whistleblower while having a plausible cover story is organizational restructure. An entire unit is abolished, allegedly on financial or efficiency grounds, and this unit just happens to be the one where the whistleblower is employed.

A second mode of failure for whistleblower protection occurs in the courts. In many cases, especially dismissals, workers go to courts to challenge their employer, relying on laws against unfair dismissal or specific whistleblower laws. The history of court rulings in the United States is discouraging: in nearly every case, judges rule against whistleblowers, taking the side of employers (Vaughn, 2012). This continues despite the U.S. Congress repeatedly legislating to make protections stronger.

When whistleblowers go to court alleging unfair dismissal or other detriments, sometimes they will be offered a financial settlement. As well as being far too small to compensate for the worker's loss, it is usually accompanied by a silencing provision or gagging clause: to receive the

money, the worker must agree to say nothing about the settlement or about what happened. In essence, the worker is bought off.

Most importantly, whistleblower protection doesn't require organizational change. Even when the whistleblower receives a generous settlement, even a very large one as with those obtained using a false claims act, this is all very well for the whistleblower—but what about the corrupt organization? Business can continue as usual, with the costs of settling cases treated as an operational expense. Some large pharmaceutical companies have paid fines of over a billion dollars, but this does not seem to make them change their business model, nor restrain them from continued criminality (Gøtzsche, 2013; Rost, 2006).

OPTIONS

To summarize, whistleblowing about serious problems is usually disastrous for the whistleblower, who is not protected, and anyway whistleblowing on its own seldom leads to serious reforms to corrupt practices. This is a serious indictment, so what is to be done? My argument is that the focus should be changed from whistleblower protection to helping workers be more effective. Employees should not rely on anyone protecting them but instead seek to gain the skills to be change agents (Martin, 2020, pp. 58–68).

There are several options besides openly blowing the whistle. One is what can be called low-profile operations, which involve cautiously seeding ideas and concerns while remaining under the radar (Martin, 2013, pp. 81–88). This might involve raising concerns in a subtle way, building relationships with key figures, and allowing wrongdoers to be exposed.

Another option is building support from co-workers and sometimes others elsewhere. Unions are a formal way to do this, but often are ineffective in acting against corruption or are part of it (Phillips, 2020). Informal groups of oppositionists can share information and ideas, protect each other, and in some cases liaise with outside supporters. Consider again Weinstein's idea that bureaucracies are like authoritarian states. A potential dissident in an authoritarian state would be foolish to trust the state constitution's high-minded statements about freedom and democracy, and sensible to observe what happens in practice. If open dissent is

a path to nowhere, then what next? Aside from acquiescence or collaboration, a dissident could take the path of mobilizing resistance, and the first step is to find and build trust with other dissidents.

A third option is anonymous dissent, either internally or externally. Anonymous whistleblowing is also known as leaking in the public interest. More on this later.

SKILLS

For each of these options, skills are vital. Many of them are helpful whatever option is chosen.

First, employees need to know how to collect information. This is vital for whistleblowers and just as vital for low-profile operations and leaking. Without documents and statements showing misconduct, it is usually impossible to convince others to be concerned or take action. Care is needed when collecting information because, in many workplaces, documenting unethical and criminal activities by management is seen as traitorous and even minor transgressions of official rules may be used as grounds for reprisals, as in the case of Richard Boyle.

Second, employees need to know how to write accounts. Data and documents on their own are seldom enough to convince co-workers or journalists: they need to be put in context and their significance explained. Sometimes a paragraph is enough; other times, a more detailed explanation is needed.

Third, employees who are thinking about leaking need to understand the media, both mass media and social media. For example, they need to know that few journalists have the time for in-depth investigations, and hence spend the effort required to find one of those few or to package their disclosures so a time-pressed reporter can use them. Just as importantly, they need to know the likely response of journalists to their disclosures so they can decide whether to approach them at all or, instead, choose a different route, whether it is posting material directly online or lying low for months or years until a suitable opportunity arises. The famous whistleblower Edward Snowden, who exposed illegal surveillance by U.S. intelligence agencies, carefully selected journalists to receive his disclosures and then spent months convincing them to do so (Greenwald, 2014; Harding, 2014; Snowden, 2019).

Fourth, employees need to understand the organization, including who has power, how that power is exercised, what challenges to abuses have occurred in the past, and the responses to those challenges. It is crucial to observe what happens when someone seeks to question those higher up. Are their ideas welcomed? In short, employees need to understand the dynamics of their own organization. This may sound easy, but it is not common. Top managers often make the way they run things opaque, and value employees who do their specialized jobs well without asking questions. Acquiring an understanding of organizational dynamics requires effort, insight, and care. Once acquired, this understanding is vital in making decisions about how and when to act against wrongdoing.

Fifth, employees need communication skills. When undertaking a low-profile operation, being able to talk with co-workers in a careful, persuasive way is crucial. When leaking to outside groups, a different sort of messaging is required.

Finally, employees need to understand themselves: their motivation, capacities, reputation, networks, and resilience. Without self-understanding, there is a great risk in making wrong decisions, not being effective, and not coping with the consequences.

Many workers who report wrongdoing to their bosses lack these skills. They take their concerns to their boss because they believe that this is the way to address a problem, and do not understand the way the organization works. They do not realize they may be subject to reprisals or, if they do, how serious those reprisals can be and how unprepared they are for them.

SKILLS IN OPERATION

A worker who discovers serious wrongdoing that implicates higher management needs to discover who else already has concerns and might be willing to take action. After doing this, the next steps depend sensitively on a range of factors, including the potential breadth of support from other workers, the power of the perpetrators, and links with outside groups. It may be possible to organize resistance from the inside, but sometimes this is futile and the best option is to leave if that is feasible. It would be like a dissident going into exile.

In an Australian government body decades ago, a worker became dissatisfied with internal dysfunction. Rather than speaking out, he produced a newsletter, titling it *Feral Cat*, revealing what was happening inside the organization, and circulated copies to co-workers. He didn't

reveal his identity, so he remained on the job, continued to collect information, and produced additional issues of the newsletter. Pre-Internet, this required considerable care to maintain anonymity, for example, setting up a post-office box and a way to have it cleared, as well as printing and distributing copies. I came into contact with the author, who sent me copies of *Feral Cat* and told me about his efforts. *Feral Cat* is analogous to the dissident writing in the former Soviet Union, called *samizdat*.

With the Internet and social media, there are more options for expressing dissent internally, for example, using remailers to send messages that disguise the identity of the sender. However, employers have ways of tracking down the source of messages, so dissidents need to anticipate responses. It is unwise to send any messages from a work email account, and even a home email account might be unsafe in countries, like Australia, where metadata is collected and potentially accessible, legally or illegally through police contacts. Safer is to buy a burner phone, send one message, and then destroy the phone. This is just an example of the planning required to send an anonymous message to workers and be able to collect more information and send additional messages.

Just as important is avoiding identification through how and what is written. Everyone has a writing style, and this style can be used for identification, so care needs to be taken. Another option is to circulate documents, and again care is needed to avoid them being used for identification. There are technical dimensions involved, such as removing watermarks and metatags.

However, technical challenges should not get in the way of basics. When photocopying documents, a common mistake is leaving a document in the copier. For maintaining anonymity, the most important thing is not to reveal one's identity to anyone. Chelsea Manning (2022) is now one of the world's most famous whistleblowers, but she might have remained unknown except for revealing her identity to someone she thought she could trust.

Revealing information anonymously is a type of whistleblowing but it has its own special name, leaking. In discussing leaking, it is important to recognize a deep-seated double standard. When people at the top of an organization reveal information, it is business as usual and seldom penalized. It is only when subordinates do the same thing that leakers are stigmatized and searches mounted to identify them (Pozen, 2013).

Leaking, to be effective, needs to connect to recipients with the capacity to mobilize opposition to wrongdoing. Calling a company

hotline is seldom effective if management is involved in or tolerating the wrongdoing because hotline reports go to management. The two most effective avenues are journalists and action groups.

In Australia in the 1970s and 1980s, employees in the federal government agency concerned with fraud in medical insurance felt they needed publicity to generate action. They leaked information about fraud to journalists who ran stories and put pressure on the government to act. These anonymous whistleblowers were never caught or known. They remained on the job and continued to leak information (Flynn, 2006).

In 2017, there were media stories around the world based on the leak of a huge number of financial documents, called the Paradise Papers, showing how multinational companies, wealthy individuals, politicians, and celebrities avoided taxes through complex structures. The leaker was never named. A year before there was similar stories about another leak of financial documents, the Panama Papers. Again, the leaker was never named. In nearly every article about these disclosures, the focus is on the issues, with scarcely a mention of the question of who leaked the documents.

WikiLeaks is the most famous portal associated with leaking. Anyone can send documents to WikiLeaks, and vast numbers have been uploaded. However, just having documents online may not be enough to make a difference. WikiLeaks had the greatest impact when liaising with media organizations, for example, to raise awareness via the "Collateral Murder" videotape (Beckett & Ball, 2012).

Julian Assange, the most prominent figure associated with WikiLeaks, has become a polarizing figure and a target for extraterritorial prosecution by the U.S. government. Whatever one's judgment about Assange and WikiLeaks, their greatest impact has been to make leaking in the public interest more legitimate. Most major news organizations now have their own portals for making anonymous disclosures. The media stories based on the Panama and Paradise Papers were organized through the International Consortium of Investigative Journalists (ICIJ), which enables collaborative efforts by teams of journalists who might otherwise be competing for headline stories. The ICIJ thrives on leaks.

Conclusion

Whistleblower protection would be a good thing—if it ever worked—because society benefits when there are timely warnings about problems. Whistleblowing offers an opportunity for organizations to become better, to fix problems before they get worse, and to take advantage of information and insights from some of their most conscientious and concerned employees. The reality is usually different. Wrongdoers usually are looking out for themselves at the expense of the organization or of suppliers, customers, or the general public.

There has been no systematic study of the relative effectiveness of open whistleblowing compared with low-profile operations or leaking in the public interest. Nevertheless, given the track record of failed whistleblower protection despite enormous official efforts over decades to provide this protection, it can be argued that an equivalent effort should be expended on improving the capacity of employees to use inside operations and to leak.

The main effort required is to help employees gain skills in pushing for beneficial organizational change, specifically to act against abuse, corruption, and dangers to the public. A variety of skills are useful for this.

When employees lack skills for dealing with wrongdoing and speak out rather than pursue safer and more effective operations, this is hardly by accident. Most employers are willing to publicize information about whistleblower protection, but they will not pass out advice manuals written for whistleblowers, and nor will they ever tell employees how to leak without getting caught.

The record of whistleblower protection in the United States, Australia, and some other countries suggests it is a solution long promised but never delivered. But it is worse than a failed promise: it is a distraction from more effective options, including developing skills, organizing for collective action, and changing the culture of the organization.

When someone contacts me and says, "I'm thinking of blowing the whistle," I will often reply, "Don't do it!" That doesn't mean never doing it, but rather first considering other options, including laying low and collecting more information, undertaking low-profile operations, seeking allies, leaking, and waiting to obtain another job before speaking out. Along the way, it is sensible not to rely on whistleblower protection.

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