

Whistleblowing: Betrayal or public duty?

The role of the media and NGOs

Whistleblowers are people who alert the public to scandal, danger, malpractice or corruption. Through all the documented case histories world-wide over the past three decades, whistleblowing has become a force for public good and is now very clearly in the public consciousness.

During the Nixon era in the U.S., Daniel Ellsberg released Government documents that reported how the public had been misled over the military's effectiveness in the Vietnam War. Clive Pointing, a British civil servant, gave to an Opposition MP information showing that the Thatcher government had misled Parliament about the sinking of the Argentine ship, *General Belgrano*. Frank Serpico testified to the Knapp Commission that his New York police colleagues had been corrupted into franchising crime. Stanley Adams exposed his employer illegally fixing prices in the European Economic Community. Karen Silkwood was killed in a mysterious car accident on her way to provide to a journalist evidence of falsified nuclear safety records by her employer, Kerr-McGee. Ernest Fitzgerald, a US Defence Department employee, testified to a US Congressional Committee about a \$2billion cost over-run on the Lockheed c-5A transport plane. In Australia, Phillip Arantz was sacked from the New South Wales police force after having disclosed the deliberate inaccuracy in published crime clear-up statistics.

John McLennan, a former Westpac Bank executive exposed the bank's duplicitous legal tactics against foreign currency borrowers in what became known as the Westpac Letters affair. In Australia whistleblowers have been highlighted in media reporting in almost all industries: oil, aviation, mining, policing, banking, shipping, medical research. Even in my own area – public broadcasting – ABC broadcaster John Millard has exposed the practice of backdoor sponsorship of some ABC programs. Personally I wish we had whistleblowers in accountancy; exposing the tricks of lawyer casuistry; insurance and advertising. There are understandable suspicions that there are a lot of questionable practices in these areas which never see the light of day

The fact that the phenomenon of whistleblowing has grown in the public sector (much less in the private sector) I think, says a lot about the differing corporate governance structures, corporate cultures, human resource practices and internal and external communications systems we have allowed to develop. In short, we live in a corporate state. In some private and public sector corporate entities and institutions even old Joe Stalin would be proud of the methodologies deployed. Dissidents within may no longer be shot, sent to accommodating psychiatric facilities or jailed, but there are other devious means used to discredit, bankrupt and destroy those who dare to question corporate authority. In the discussion about corporate governance, the role and

responsibilities of directors, corporate statements of values and ethics, many corporations have adopted what they call 'best practice' models to enshrine and publicly promote their commitment to ethical conduct. But forgive me for being sceptical about all these illuminated statements of corporate commitment which have appeared through the 1990s. I won't be crass and shout out: "Bullshit!" Just let me say .. Enron, Worldcom, HIH and OneTel. As investors and superannuation funds worldwide watch the vaporisation of billions of dollars as publicly listed companies go belly up and expensive, taxpayer-funded inquiries are initiated, all of us are entitled to ask: where are the whistleblowers when you need them? More importantly, where are the responsible and ethical accountants and senior managers willing to raise their voices internally when they have reasonable suspicions about the conduct of their superiors, the competence of those making the critical analysis and monitoring of corporate and business plans going to their boards and their CEOs? I realise, of course, many CEOs can be blind-sided by salary and share option packages beyond the wildest dreams of avarice, but what does that say about the ethical qualifications of our organisational leaders? Let me quote Walter Wright, executive director of the De Pree Leadership Centre (Pasadena) writing in the St James Ethics Centre Quarterly:

I believe you learn more about the culture of the organisation by observing the behaviour and actions of the people than by reading the statement of organisational values.

What I have learnt from the presentations of the speakers here today is the great need to overhaul and reform internal corporate cultures; to democratise them, to take people of goodwill into your confidence, to be transparent. The public can be misled from time to time. But they are not fools. Unless our organisations and their managements adopt more healthy attitudes many more whistleblowers will appear when circumstances and the moral imperative demand ... whatever the personal consequences.

And as a journalist who has often worked with whistleblowers in the exposure of their damaging information I can tell you the media will exploit the phenomenon of whistleblowing to the full. Because when a whistleblower decides all internal avenues are exhausted and makes the decision to go public, the story produces good old Sensation with a capital 'S'.

I know many people complain about the media. And there is much to complain about. The media can be deeply superficial. The media, including the public broadcasters I concede, seems locked into the 24 hour news cycle where important issues can be deprioritised in an instant ... by a sex scandal .. or a plane crash. Media can be manipulated or diverted by the clever spin doctoring of politicians or corporations or vested interest groups. The media has its

limits, particularly when you realise the overwhelming bulk of it is commercial in nature. Audiences have to be delivered for advertisers; circulations have to be sustained and increased, forcing narrow commercially-inspired discriminating judgments about what will interest consumers. Let us understand this and lower our expectations of the media.

I am also pleased to report that public consciousness about the media and its failings is at a high level in Australia thanks to an ABC program called *Media Watch* which has been running (on and off) for about 13 years now. Whistleblowers themselves know the deficiencies and short attention span of the media. To the extent the media can grab a mass audience and therefore expose corruption, incompetence or malpractice, it can be very useful. To the extent that it can continue to highlight the retaliatory and reprisal action taken against genuine whistleblowers it can be a protective force. But having reported on the efforts of whistleblowers over many years I have watched as corporate cultures quickly regroup after the damage control efforts take effect, the public reassurances are given, and then continue on their merry ways.

It has been my experience in over 30 years in Australian journalism that rarely do individual exposures of themselves lead to fundamental changes in attitudes. About the only example of attitudinal revolution I can think of was the political impact in Queensland of the Fitzgerald inquiry into police and political corruption. So called roll-over witnesses – those coerced by the royal commission's powers – exposed a hierarchy of police corruption flowing into political corruption. The incumbent government fell and reforms to the gerrymandered electoral system and the accountability infrastructures quickly followed. Instead of malpractices being buried for decades, an external accountability regime exists which has since exposed more contemporary wrongdoing.

With all the whistleblower stories now on the public record you would think there would be a change in corporate attitudes at political, board and senior management levels and throughout the professions. We are still waiting.

Evan Whitton, the great pattern journalist of Australia, has coined the term 'the Cameron effect', a theory on the formation of public opinion. James Cameron was a journalist on the *London News Chronicle*. Who knows what forms public opinion? Cameron observed that many people read the sports pages and almost nothing else. The Cameron effect holds that public opinion can be formed in a way similar to a physics experiment in a laboratory where a space is bombarded with particles (in the media's case, facts) until a critical mass is reached. (The most recent example of the Cameron effect in Australia perhaps was *Media Watch's* revelation of a cash for comment

arrangement involving an influential radio talkback host and the lobby group representing Australian banks. The revelation came after years of stories about the apparent compromise of commercial radio. Just one more particle, one more fact, and there was a media 'explosion' or frenzy precipitating the first Australian Broadcasting Authority inquiry into the possible breaches of the Broadcasting Services Act and codes of conduct). With the now broad anecdotal case histories of whistleblowers in this and other countries, I am now waiting for the Cameron effect to materialise to produce the necessary explosion which will fundamentally change attitudes in corporate cultures. I can hear many of you thinking: You're dreaming!

In the meantime the media will continue to act as the call of last resort for the desperate whistleblower. It is easier in the public sector where the taxpayers are paying the fright: taxpayer dollars are at stake. It is harder in the private sector where public exposure is likely to irreparably damage the private sector entity, leading to a conflagration of the share price and the potential loss of jobs for innocent employees.

I note there has been a very limited move to whistleblower protection legislation in Australia. I note that neither the Hawke/Keating nor the Howard governments federally have even tried to consider whistleblower protection. This is revealing. I also note the academic criticism of whistleblower protection laws which do exist. Where they are designed to divert or avoid public disclosure of the bad practices they will themselves be discredited when they fail to bring about necessary accountability. I have observed in my 1997 book on Whistleblowers that while some governments have adopted protected disclosure measures to statutorily protect whistleblowers, the protection is problematic when it comes to the involvement of the media.

The whistleblower-media relationship is virtually unresearched, according to William de Maria of the University of Queensland. Conflicts between sensationalism and investigative journalism; snapshot coverage and sustained reporting; and victim-focused versus system-focused stories swim below the surface, usually out of sight of the whistleblower. No individual can completely rely on legislative protection or media solidarity with their cause. The process of whistleblowing is fraught with danger. Those embarking on it should be starkly aware of all the consequences.

In New South Wales we have a public sector accountability structure which is extensive and now long standing: the Independent Commission Against Corruption; the Ombudsman; the Police Integrity Commission; the Health Care Complaints Commission and many others. Over the years media whistleblowing in the public sector has existed alongside these bodies. Politicians confronted by media exposures can simply refer the complaints to the relevant external over-sight bodies. This structure is necessary and valuable and I feel sure is here to stay. There seems to

be no justified for sunset clauses on these accountability bodies because it is assumed that attitudes will not change towards whistleblowers in either the short time or long term.

But where work really needs to be done now, given the difficulties facing private sector whistleblowers, is in the private sector. As I indicated whistleblowing in the private sector is fraught with added danger as public exposure can destroy the reputation of companies, totally dependant on investor confidence. In this regard the Australian Securities and Investment Commission needs to do the most work to devise a whistleblower protection regime to look out for, not only their informants, but the investing public as well.

After the Australian Competition and Consumer Commission recently indicated it was in contact with an oil company whistleblower, the prospect of more private sector whistleblowing is fascinating. This will be the next stage in the whistleblowing phenomenon.

Given Enron, Worldcom, HIH and OneTel ... it is about time.

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