

**Session 4: Whistle-blowing Mechanisms in
Public and Private Organizations**

Jon S.T. Quah, Ph.D.
Anti-Corruption Consultant
Email: jonstquah@gmail.com
Website: <http://www.jonstquah.com>

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Outline of Presentation

- 1. What is whistle-blowing?**
- 2. What are the benefits of whistle-blowing?**
- 3. When is whistle-blowing justifiable?**
- 4. Whistle-blowing is hazardous for whistle-blowers**
- 5. Whistle-blowers must be protected**
- 6. Case study 1: The Global Fund to Fight AIDS, Tuberculosis and Malaria**
- 7. Case study 2: Whistle-blowing in Australia**
- 8. Case study 3: Whistle-blowing in South Korea**
- 9. Conclusion**

What is Whistle-blowing?

The term “whistle-blowing” originates from the practice of British policemen who blew their whistles whenever they observed the commission of a crime.

Whistle-blowing refers to “the disclosure by organization members (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action.”

Source: J.P. Near & M.P. Miceli, “Organizational dissidence: The case of whistle-blowing,” *Journal of Business Ethics*, Vol. 4 (1985), p. 4.

Whistle-blowers can be external or internal:

- **External whistle-blowers report misconduct in an organization to outside persons and agencies like lawyers, mass media, law enforcement, or watchdog agencies.**
- **Internal whistle-blowers report misconduct in their organization to other employees or superiors in the same organization.**

Whistle-blowers report on four types of misconduct:

- 1. Illegal or unlawful conduct such as theft, fraud, bribery, or money laundering.**
- 2. Unprocedural conduct occurs when policies, rules, or regulations in an organization are violated.**
- 3. Unethical conduct undermines universal, core ethical values such as integrity, respect, honesty, responsibility, accountability, and fairness.**
- 4. Wasteful conduct occurs when resources are spent in a wasteful manner.**

Source: http://www.theglobalfund.org/documents/oig/Whistle-blowing_Policy_for_the_Secretariat.pdf.

What are the benefits of Whistle-blowing?

Miceli and Near (1992) contend that whistle-blowing provides these four benefits to an organization:

- **Increases the safety and well-being of organization members by warning the management of problems that threaten the personal or economic well-being of their members.**
- **Reinforces the organization's code of ethics by enabling the management to learn of and correct misconduct.**

- **Reduces organizational waste and mismanagement by informing management of lower-level problems so that it can make appropriate corrections.**
- **Improves employee morale as successful whistleblowing shows employees that they have the power to change unethical behaviour in the organization and improve their work lives as well as the outcomes for others.**

Source: M.P. Miceli and J.P. Near, *Blowing the Whistle: The Organizational & Legal Implications for Companies and Employees* (New York: Lexington Books, 1992), pp. 11-12.

When is whistle-blowing justified?

Kernaghan and Langford contend that whistle-blowing by public servants is justified when these conditions are met:

- **“The whistle-blower must be confident that the transgression has caused or will cause in the near future demonstrably harmful effects.”**
- **“The accusation of serious harm must be supported by unequivocal evidence.”**

- **The public servant must “ascertain through regularly established channels within the organization that the perceived harm will not be corrected.”**
- **“The potential whistle-blower must have good reasons to expect that the unauthorized disclosure of confidential information will lead to appropriate changes.”**

Source: Kenneth Kernaghan and John W. Langford, *The Responsible Public Servant* (Halifax: Institute for Research on Public Policy, 1990), pp. 96-98.

Whistle-blowing is hazardous for whistle-blowers

Whistle-blowing is dangerous for the whistle-blower because those who benefit from the misconduct will retaliate against or victimize him or her for the loss or potential loss, of that ill-gotten benefit.

In other words, the whistle-blower represents a threat to those guilty of misconduct in an organization and they will take action to remove this threat by discrediting, ostracizing, or firing the whistle-blower or, in the worst case scenario, by killing him or her to prevent the exposure of their misconduct.

According to Newell, “from the perspective of society the whistle-blower is often treated as a moral hero, [but] within the organization he is typically treated as a traitor.”

Source: Sue Newell, *Creating the Healthy Organization: Well-being, Diversity and Ethics at Work* (London: Thomson Learning, 2002), p. 217.

In his study of 233 whistle-blowers, Soeken found that 84 per cent had been fired as a result of their actions.

Source: D.R. Soeken, “Whistle-blowers face retaliation, dismissal, study shows,” *Ethikos*, (September-October 1987): 4-9.

“At the ‘Future of Whistle-blowing,’ a conference organized by the Government Accountability Project, a whistle-blower advocacy group, every single attorney said he or she advised clients not to blow the whistle but to find some other way. **It costs too much and it hurts too much.** ... Most whistle-blowers I have spoken to reached the same conclusion: **don’t do it; the cost is too high.** Said Al Ripskis, who kept his job after blowing the whistle on the Environmental Protection Agency’s failure to enforce its own rules. ‘My advice to potential whistle-blowers can be summarized in two words: **Forget it!**’”

Source: C. Fred Alford, *Whistleblowers: Broken Lives and Organizational Power* (Ithaca: Cornell University Press, 2001), pp. 33-34.

Two Famous Whistle-blowers

1. Frank Serpico, a detective in the New York City Police Department, exposed corruption in his Department to the Press. On February 3, 1971, he was shot in the face during a narcotics raid in Brooklyn. Fortunately, he recovered after six weeks of hospitalization. In June 1972, he resigned and left for Switzerland, where he stayed for the next 30 years. It was widely believed but not proven that his colleagues had put a contract on him for being a whistle-blower.

Source: Peter Maas, *Serpico* (New York: Bantam Books, 1973), pp. 11-14, 313.

2. John Githongo, Permanent Secretary for Governance and Ethics in the Government of Kenya, resigned on February 7, 2005 and fled to Oxford University in the United Kingdom after receiving death threats for investigating grand corruption among his colleagues. From his base at Oxford University, he completed a dossier exposing corruption among senior Kenyan government officials in September 2005. He sent copies of the dossier to President Mwai Kibaki and Justice Aaron Ringera, Head of the Kenyan Anti-Corruption Commission in November 2005. When he did not hear from them, he gave an interview to two journalists from the *Daily Nation*, Kenya's major

newspaper, which publicized details of the corruption revealed in Githongo's dossier in January 2006. The expose of grand corruption in Kenya resulted in the condemnation of the government by the opposition Members of Parliament, civil society, and the Catholic Church. However, no minister or senior civil servant was sacked or prosecuted.

Source: Michela Wrong, *It's Our Turn to Eat: The Story of a Kenyan Whistle-blower* (New York: HarperCollins, 2009), pp. 323-327.

Protection for Whistle-blowers

Apart from the benefits of whistle-blowing, the management of the public or private organization should realize that their employees are in the best position to detect and report any proposed or actual misconduct to them.

However, in view of the negative consequences facing whistle-blowers, potential whistle-blowers will not report internally if they fear reprisals from within the organization or suspect that the management condoned or approved the illegal activity.

An employee will not blow the whistle internally unless he perceives that it is safe to do so. Thus, to encourage whistle-blowing, whistle-blowers must be protected.

Case Study 1: The Global Fund to Fight AIDS, TB and Malaria

The Global Fund to fight AIDS, Tuberculosis and Malaria protects whistle-blowers by treating their reports as either confidential or anonymous.

Confidential whistle-blowing

The Global Fund protects the confidentiality of the whistle-blower and will not reveal his or her identity to any third party.

Anonymous whistle-blowing

When a whistle-blower chooses not to reveal his or her identity, the reporter's identity cannot be ascertained by anyone.

Procedures for anonymous whistle-blowing

A whistle-blower can report misconduct anonymously to the internal whistle-blowing line for anonymous reporting. Details on the procedures for anonymous whistle-blowing are provided on the Global Fund's website in the document *Whistle-blowing Procedures*.

Procedures for confidential whistle-blowing

For the Secretariat staff in Geneva, reporting should be in accordance with the human resource regulations on discipline and/or the protocol between the Office of the Inspector General and the Secretariat.

Source: http://www.theglobalfund.org/documents/oig/Whistle-blowing_Policy_for_the_Secretariat.pdf.

Case Study 2: Whistle-blowing in Australia

A 2005 survey of 7,663 public officials from 118 public agencies in Canberra, New South Wales, Queensland and Western Australia found that:

- 1. 71% (5,473 respondents) had observed wrongdoing during the past two years.**
- 2. 39% (2,146 respondents) had reported the most serious wrongdoing seen.**
- 3. An ethical responsibility to report was judged to be the most important reason given by the respondents.**
- 4. Managers play a crucial role in the effective or ineffective handling of whistle-blowing cases.**
- 5. The research shows that the best way to ensure that staff speak up is to demonstrate that if wrongdoing,**

is reported, something will be done.

- 6. For agencies to achieve the benefits from whistle-blowing, they must provide training for supervisors on the importance of whistle-blowing and the receipt and handling of disclosures.**
- 7. The agencies' most important priority is to provide support to whistle-blowers because "the protection of whistle-blowers is the weakest aspect."**
- 8. The research shows a clear need for the Australian government to "put in place better overall frameworks for the management of whistle-blowing." (p. 160).**

Source: A.J. Brown (ed), *Whistle-blowing in the Australian Public Sector* (First Report, Griffith Law School, Griffith University, October 2007) available at <http://www.apsacc.com.au> at 2007 Program and Papers.

Case Study 3: Whistle-blowing in South Korea

South Korea is one of the few Asian countries which provides protection for whistle-blowers who expose corruption by other public officials.

Chapter 3 of the Anti-Corruption Act of July 2001 focuses on “Whistle-blowing of Act of Corruption and Protection of Whistle-blowers.”

Article 26 requires public officials to report acts of corruption by other public officials to the Board of Audit and Inspection (BAI) and the Korea Independent Commission Against Corruption (KICAC).

Article 29 specifies how the KICAC should deal with whistle-blowing cases involving public officials:

- **KICAC receives complaint from whistle-blower and confirms the facts (completed within 30 days)**
- **KICAC refers complaint to relevant investigative agency such as the BAI or other public supervisory agencies, which are required to notify KICAC of the results within 60 days.**
- **KICAC may request a re-investigation if the results are incomplete.**
- **KICAC notifies whistle-blower of the results of the investigation.**

Article 32 provides whistle-blowers with a guarantee of non-reprisal. If a whistle-blower has suffered in his position, he can request the KICAC to guarantee his position or transfer him to another position.

Article 33 protects whistle-blowers by prohibiting the KICAC or the relevant investigative agency from disclosing their identities without their consent. A whistle-blower can also request the KICAC to provide police protection for him and his family.

Article 36 states that the KICAC can recommend that a whistle-blower be financially compensated if his report enhances public interest and prevents damage to the property of public institutions.

Article 37 states that the KICAC will form a Compensation Deliberative Board to decide on the amount to be paid to whistle-blowers, who can be rewarded up to the maximum amount of US\$160,000.

Ehrlich and Kang contend that “to the extent that people in a Confucian culture are not willing to betray a friend, one wonders whether these protections, standard equipment in the anti-corruption arsenal, add much.”

Source: C.P. Ehrlich and D.S. Kang, “Independence and Corruption in Korea,” *Columbia Journal of Asian Law*, Vol. 16, No. 1 (Fall 2002): 44.

The small number of whistle-blowing cases in South Korea from 2002-2004 as shown in Table 1 below indicate that these scholars are right.

Table 1: Whistle-blowing cases handled by KICAC, 2002-2004

Year	2002	2003	2004
Whistle-blowing cases (a)	38	52	34
Confirmed WB cases (b)	12	18	29
Percentage of (b)/(a)	31.6%	34.6%	85.3%
Reports processed by KICAC (c)	2,446	1,656	1,802
Percentage of (b)/(c)	0.49%	1.08%	1.60%

Source: KICAC, *Annual Reports 2002-2004*

Conclusion

- 1. Genuine whistle-blowers must be adequately protected to encourage them to report wrongdoing in their organizations. However, whistle-blowers who make false allegations should also be punished.**
- 2. As whistle-blowers face retaliation, ostracism, dismissal or death threats, their organizations must make it safe for them to blow the whistle.**
- 3. The establishment of a whistle-blowing mechanism in a public or private organization with adequate safeguards to protect the whistle-blowers' identities is a necessary but insufficient condition for ensuring the organization's internal accountability.**

4. The internal accountability of a public or private organization can be enhanced by adopting this three-pronged strategy:

- **Provision of ethics training for all its staff;**
- **Punishing staff who violate its code of ethics; and**
- **Establishing an internal whistle-blowing mechanism with safeguards to protect whistle-blowers from retaliation, ostracism, dismissal or death threats.**

5. The management of the organization must show its commitment to combating corruption by protecting whistle-blowers. According to an OECD Report:

“A whistle-blowing culture cannot succeed without a strong and clear signal from the very top of the organization that it is against corruption and is resolved to go about its business lawfully. Such a culture will provide assurances against reprisals for whistle-blowing on wrongdoing. ... To be effective, such a system will also provide that where is good evidence to support the concern, whistle-blowing to a designated authority will be protected. This will reassure the whistle-blower that the matter can safely be raised internally.”

Source: *Whistle-blowing to Combat Corruption* (Paris: OECD, 2000), p. 17.

Suggestions for further reading

1. **Bowman, J.S.** “Whistle-Blowing in the Public Service: An Overview of the Issues” in W. Bruce (ed), *Classics of Administrative Ethics* (Boulder: Westview Press, 2001), pp. 267-280.
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3. **Johnson, R.A.** *Whistle-blowing: When it Works and Why* (Boulder: L. Rienner Publishers, 2003).
4. **Miceli, M.P. et al.** *Whistle-blowing in Organizations* (New York: Routledge, 2008).

5. Nader, R. *et al.* (eds). *Whistle Blowing: The Report of the Conference on Professional Responsibility* (New York: Grossman Publishers, 1972).
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7. Vandekerckhove, W. *Whistle-blowing and Organizational Social Responsibility: A Global Assessment* (Aldershot: Ashgate Publishing, 2006).
8. Westin, A.F. (ed) *Whistle Blowing: Loyalty and Dissent in the Corporation* (New York: McGraw-Hill Company, 1981).