

Blowing the Whistle on the Corruption of Imbalanced Institutional Power: A Call to Action

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Abstract

Considered in this article is the dimly issue of protecting whistleblowers from organizational backlash and retaliation that extends into the formal job market and affects how fairly whistleblowers are viewed and treated—termed the corruption of imbalanced institutional power. Since existing laws purporting to protect whistleblowers are simply inadequate to their stated aims, and because past employers and potential future employers can, and often do, form a systemic interlocking network that effectively conspires against whistleblowers, a first step, to which this article advances, is explicitly set on bringing together a systems-focused research agenda framed around areas central to the corruption of imbalanced institutional power. To this end, the aspirational targets of the present article are fourfold: to stimulate further thinking, interest, debate, and ultimately, future study.

Keywords: ethics complaint, whistleblower, employer retaliation, termination, civic virtue

In 2008, Christopher Kirkpatrick, a freshly minted doctor in clinical psychology, landed a position at the Veteran Affairs (VA) as a Clinical Psychologist. Not long into his tenure he noticed that patients appeared overmedicated, but he was very cautious about bringing it to the notice of his supervisor (Slack, 2015). He later raised the issue in a staff meeting, and not too long after that he was reprimanded (Slack, 2015). The reprimand stated, “Dr. Kirkpatrick was cautioned about engaging in further criticism of the VA, advised to focus on his own work, and counseled that he should avoid advising on medications as it did not fall in his scope of practice” (Slack, 2015, para. 9). Some time afterward he formally submitted in writing to his supervisor his verbalized concerns about the continued issue of patients appearing overly-medicated (Committee on Homeland Security and

Governmental Affairs, United States Senate, 2016a). Kirkpatrick was subsequently fired for “performance issues” and on that same day in the evening the 38-year-old took his own life (Committee on Homeland Security and Governmental Affairs, United States Senate, 2017, p.4).

Just over a year following the firing, the VA opened an investigation in response to the death of a patient from “mixed drug toxicity” at Tomah, Wisconsin, VA, where Kirkpatrick had worked (Slack, 2015, para. 13). The investigative findings indicated that veterans were two and one-half times more likely to get a higher opioid dosage than the national average, and they were more than twice as likely to get prescriptions that cause severe contra-indications when consumed together (Slack, 2015). The investigative probe found “unsafe clinical practices that led to patient harm” (Slack, 2015, para. 13). Separate investigations of the Tomah VA by the DEA and other agencies found systemic and entrenched problems dating possibly as far as back as 2004 concerning overprescribing, diversion, abuse and overdose of VA prescriptions (Committee on Homeland Security and Governmental Affairs, United States Senate, 2016a, 2017). Inaction of VA senior management to address staff concerns regarding patient safety within the milieu of a well-established culture of fear and retaliation prevented whistleblowers from stepping forward and/or speaking up (Committee on Homeland Security and Governmental Affairs, United States Senate, 2015, 2016b).

An investigation into the Tomah VA following Dr. Kirkpatrick’s death by the Committee on Homeland Security and Governmental Affairs, United States Senate (2016a), concluded that Kirkpatrick was fired in retaliation for blowing the whistle (p.7). Given the totality of reports, it then appears that Kirkpatrick’s courage in taking responsibility to speak out and to ethically “do the right thing” was proved justified by these findings. Eight years after his death, the U.S. Congress passed into law the Dr. Kirkpatrick whistleblower Protection Act of 2017(S.585).

But even if Kirkpatrick’s concerns had proved misplaced, he would still have been ethically justified in raising them. As long as his concerns were genuine—motivated by professional conscience and not merely vexatious—he was fully justified in drawing his concerns to the attention of others by speaking up. Willingness to raise issues of concern in patient care is behavior that should be lauded and encouraged, regardless of whether the issues ultimately prove valid. Kirkpatrick’s case is but one of numerous incidents of whistleblowing and subsequent retaliation within the VA system. For example, in 2016, the U.S. Office of Special Counsel had 300 active

whistleblower retaliation claims lodged by whistleblowers (U.S. Office of Special Counsel, 2016). Meanwhile, the number of VA prohibited practice personnel complaints filed by employees in that year was 1,147 (U.S. Office of Special Counsel, 2016).

The purpose of this article is to raise discussion on the topic of whistleblowing in health and human services practice, with respect to how whistleblowers or practitioners who report ethics violations when they have sought no less than to act ethically, morally, or legally in their employment are unfairly treated in the employment sector; a subject currently under-served in the extant literature. First, the issue of corruption of institutional power is introduced, which is presented in terms of employer retaliation, reputation damage, and exclusion from future employment. Attention is then drawn to inadequacies in standards of supervision in clinical practice and the difficulties presented to employees reporting ethics violations, with a “call to arms and armour”. In that section, an aspirational research agenda highlights eleven areas or issues to achieve the aim of offsetting and minimizing the harmful impact of the corruption of institutional power.

The eleven areas or issues broadly address: 1) unfair employment discrimination; 2) ethics in hiring practices; 3) non-exempt disclosure status of job termination; 4) hiring and firing policies; 5) the prevalence of whistleblowing in the human services field; 6) legislative change to augment whistleblower protections; 7) the role of professional organizations in protecting and advocating for employment rights; 8) need for legal representation/civil counsel in the face of the corruption of institutional power; 9) efficacy of ethics education and training in equipping professionals to deal with the consequences of the corruption of institutional power; 10) the documented extent of unionization in the human services field and adequacy in services to support and protect whistleblowers; and 11) qualifying the need for a multidisciplinary ethics panel subcontracted with the state auditing authority at local provider level. The benefits of better understanding these issues and areas of need with respect to the corruption of institutional power relate to developing concretized action for the protection of change agents, including whistleblowers, from organizational backlash and retaliation (i.e. blowback), particularly in the job market, which is important in social welfare as well as broader society.

The Corruption of Imbalanced Institutional Power

While an inherent power imbalance invariably exists in the relationship between an institutional employer and its employees, a good employer will nevertheless treat employees fairly and involve employee input into procedures that directly address employee complaints and grievances. However, in repressive organizational systems a cynical “save your own skin” mentality is invariably instilled into staff, which reflects a balance of power that improperly favors the employer. Invariably, the whistleblower’s employer besmirches the whistleblower’s character as the employer engages in retaliation devised also as spectacle to make an example of the whistleblower (Alford, 2002). This demoralization and humiliation extends into the formal job market in job application requests for the reason of separation from previous employer, soliciting “poor recommendations or no recommendations from prior employer” that detrimentally affect how ethically justifiable whistleblowers are viewed and treated by future employers (Lipman, 2012, p. 60). In turn, there are diminishing employment prospects or experiences of inability to obtain new employment, as past employers and potential future employers systematically scheme (e.g., before interviewing the whistleblower for a job, the hiring manager informally elicits the opinion of one employee and allows rumor and hearsay to influence hiring decision) in morally unjustifiable wrongdoing (in sync with modern standards of employment hiring) out of line with ethical standards and principles.

Though laws make it illegal for employers to retaliate against practitioners who report ethics violations when they have sought no less than to act ethically and/or legally in their employment (e.g., the Whistleblower Protection Act), by and large employer retaliation in some form is the rule rather than the exception (Devine & Maassarani, 2011; Patrick, 2010; Pope, 2017; Rothschild & Miethe, 1999). Hence, while Kirkpatrick’s case qualifies as a violation of the “legal protections” afforded whistleblowers under federal law, it demonstrates that “legal protection” is broadly a misnomer and not preventative but post-hoc—after the fact—and only an option for some whistleblowers (Lipman, 2012). This is because any such recourse to the courts can only transpire after an employer has struck a *coup de grâce* of retaliation against the employee, which frequently involves termination (Pope, 2017). Whistleblower protections do little to protect whistleblowers from the consequences of psychological injury and damage to life circumstances (Kerr & Rivero, 2015) or the lived impact of no income and a sullied employment reputation that become the specters of so-called “doing the right thing”.

Some employers preempt whistleblowers by finding devious and unscrupulous ways to fire

an employee on some pretext that masks the true reason (Ash, 2016; Miceli, Near, & Dworkin, 2008). From this perspective, “The organization’s goal is to disconnect the act of whistleblowing from the act of retaliation, which is why so much legislation to protect whistleblowers is practically irrelevant” (Alford, 2002, p. 31). Thus, pretexts can involve minor technicalities, like arriving a few minutes late to work, or insignificant issues that in other cases might merit informal discussion, a warning, or a mild reprimand, but become treated as egregious violations (Devine & Maassarani, 2011). Employers in such cases spin the cause of dismissal as stemming from something inherently wrong with the employee, that is, “not a good fit” or “a bad apple.” So, a responsible employee who acted with enough moral, ethical, or legal concern to “do the right thing”, or knowingly confronted in challenging, objected to, or rejected unethical directives and/or immoral cultural patterns, finds they have become indelibly labeled by employers as an undesirable risk (Pope, 2017). The onus now falls on the fired employee to prove to any potential employer that the reason they were fired was not due to being a morally dissolute person.

Being fired in such circumstances means having one’s work record permanently scarred and one’s personal name marred by a host of misperceptions, not the least of which is a belief that anyone fired must have done something bad or legally wrong to deserve it. The whistleblower is now “marked” by the dismissal and future employment often hinges on receipt of the previous employer’s job reference. Employment applications legally exempt applicants from disclosing race/ethnicity, gender, and disability. However, federal and state applications, as well as the private sector, do require disclosure of previously being fired. Failure to disclose could result in immediate disqualification from an application or to automatic termination if already hired. Virtually all employers vet past employer job references, but one can imagine that explaining the actions by a past employer, and events leading up to dismissal, becomes impractical within the span of a job interview. Any uninvited attempt to describe the unethical practices of a previous employer is a significant violation of the tacit rules of “job interview etiquette” and bound to create a bad first impression (Bolles, 2017). Generally, there is an implicit assumption that the person fired must be at fault (as a troublemaker, rabble-rouser, mentally/emotionally instable, etc.) and that redeeming their character requires, in part, openly admitting ownership of past errors and taking full responsibility for being sacked. Given the high probability of a presumption of guilt, a potential employer is unlikely to create space in the time of an interview to explore the whistleblower’s side of the story. In effect, the past employer’s reprisals continue long after the whistleblower is fired. Suffice to say, the current

system of firing and hiring gives the benefit of doubt to the employer, while casting an indefinitely long shadow of suspicion upon the whistleblower—a corruption of imbalanced institutional power.

Christopher Kirkpatrick's story suggests he felt a brooding sense of impending doom, which eventually descended into utter despair after being fired (Slack, 2015). Did he foresee an arduous uphill fight against a rigged system in which the odds were stacked against him fulfilling his dream career as a clinical psychologist? Did he miscalculate the potential implications of “doing the right thing” without being fully prepared for the worst-case scenario in facing the repercussions? In the days before he took his own life, did he feel plagued by a foreboding sense of guilt, shame, and regret in the light of blowing the whistle and the bleak outlook for his future career prospects the day he was terminated? We can only surmise on the consequences of dealing with a perceived realization of—in Langston Hughes' phrase—“a dream deferred” (Hughes, 1951).

A Call to Arms and Armour

As with whistleblower cases in general, the story of Christopher Kirkpatrick raises questions about the types of institutional structure and management environment where he worked. Apparently, Kirkpatrick felt uncertain about referring his overmedication concerns to his supervisor. When he finally raised the issue, he appears to have been rebuffed. Rather than acknowledge and consider his concerns, it was reported that the staff denied him any further contribution to their decisions.

The distance in relationship between Kirkpatrick and his supervisor was clearly unfortunate. As mentor, and closest in authority, a supervisor should be openly receptive to the concerns of supervisees. In turn, staff colleagues should be willing to hear significant concerns and evaluate them fairly. This process of being reasonably heard is important for the confidence of the employee, even if it doesn't always result in further action. In this case, the response of management was wholly inadequate. No consideration was apparently given to engage Kirkpatrick in examining his concerns. Instead, management first issued a reprimand, and once Kirkpatrick put his concerns to his supervisor in writing, he was fired.

It is problematic in clinical practice when those working face-to-face with patients feel unable to express any concerns they may have. Ideally, those chosen for a supervisory role, at the very

least, should possess basic supervisory relationship skills. These involve a receptiveness to frank conversations with supervisees and the ability to offer confidence that can support them in their tasks. Regrettably, the available evidence from the literature on supervision in health and human services offers little assurance in this area and much concern.

Schmidt's (2012) review of the addiction treatment literature, for example, noted that agencies tend to undervalue or neglect proper supervisory education, formal training, and competency development. Consequently, the quality of supervision mainly depends on who is supervising, which "does not necessarily mean one is learning appropriate or effective supervision models or strategies" (Schmidt, 2012, p. 501). A literature review on supervision in public sector behavioral health and human services by Hoge, Migdole, Farkas, Ponce, and Hunnicutt (2011) found that most individuals placed in a supervisory role received no proper preparation or capacity training. Opportunities to gain the essential skills and acquire the kind of values regarded as desirable by supervisees were poor, and a majority of supervisor appointments were gained through promotion based simply on seniority. The lion's share of such literature on clinical health supervision rests in the nursing field. Dilworth, Higgins, Parker, Kelly, and Turner (2013) concluded from their literature review that "nursing research increasingly calls for clinical supervision to support nurses and improve nursing practice. Despite this, clinical supervision is not well established in healthcare organizations" (p. 22).

Employers can create reasonable standards for their organizations by implementing reward systems with incentives for good behaviors and correct performance; remedial programs for behaviors that falls below acceptable standards; and, in rare cases, the choice of dismissing employees. However, such benefits as these are lost if the employer's own standards are harmful, as appears to have been so in the Kirkpatrick case.

A systems-focused research agenda to offset the corruption of imbalanced institutional power

Since larger systems outside of those in which agencies directly operate must be engaged to accomplish substantive change or systems transformation, an inclusive focus on "systems thinking"—from micro (employee), to meso (employer/single organizational, professional

associations), and macro (inter-organizational, industry-wide or statutory frameworks) levels—is used to address the listed research agenda, as follows:

1. Ethically justifiable whistleblowers fired for speaking up risk facing further injustice by suffering unfair discrimination when employers fail to distinguish them from categories of persons fired for immoral, illegal, and/or unethical conduct. Research is needed to examine the extent to which ethically justifiable whistleblowers are subject to wrongful termination, and to establish their subsequent employment trajectory in the health and human services field.
2. As part of the employment process, applicants are required to provide reason for previous employment separation. Research is needed to evaluate how often employers encourage or fail to embrace hearing a full first-hand account from ethically justifiable whistleblowers who have been fired. Such empirical investigation could reveal how far ethics is in operation at this level and whether employers ignoring the moral dimensions of a dismissal incline to a hasty and misguided determination of the suitability of an applicant.
3. The granting of legal exemption allowing a job applicant to not disclose being fired from past employment due to ethical conflict is not codified into current employment law. Research is needed to determine how frequently the previous employer's "job reference" functions as a tool of reprisal to denigrate the job applicant's character or work ethic and impact on future employment prospects.
4. The degree to which the concepts of social justice and civic virtue are structured into the hiring and firing policies of employers is a needed area of research that bears on the moral corruption of imbalanced institutional power. For instance, the ideal employer would show genuine interest in hearing and adequately understanding why the applicant was fired and reviewing any corroborating evidence provided by the whistleblower. Two targeted outcomes of such an approach would be the favorable hiring of fired whistleblowers potentially recognized as ethical all-stars, and ethically justifiable whistleblowers being treated as valuable employees and hireable assets.
5. Currently, there is no known publicly available data to indicate the prevalence of whistleblowing in the human services field. Thus, no official information exists on how many professionals are fired each year after taking an ethical stand or lodging an ethics complaint. With a dedicated research agenda that aims to collect this and related data, a better understanding of the moral corruption of imbalanced institutional power may be revealed in

terms of how conducive human services agencies are to the filing of ethical complaints, the value placed on ethical behavior when reporting infractions, the effectiveness of enforcement mechanisms, and other data.

6. Whistleblower laws are inadequate to prevent or shield employees from the harmful impact of institutional reprisals. With systemic gathering of data on the imbalance of institutional power, findings could potentially be parlayed into legislative change that can trickle-down into agencies and organizations in terms of shoring up preventative protections for whistleblowers. These should protect from unjust dismissal, and help agencies establish formal channels for employees to report misconduct with explicit safeguards for whistleblowers signaling ethics violations. Research is needed to determine how common it is for health and human services agencies to have ethics procedures in place specifically for whistleblowing.
7. It is not known how many health and human services professional associations act as advocate for their members, nor the basis of any selection criteria or the kind of rationale and guidelines that may be followed. Further research and documentation is needed to investigate the viability of professional associations enlarging the focus of their advocacy to play a role in protecting members making ethical complaints and risking employment consequences, and to potentially assist in rectifying unethical employer actions.
8. Professionals and professions in the health and human services fields may underestimate the importance of “We’re here to help you” advertisements in professional trade magazines. The services of collaborating legal firm and pro-bono attorney services offer potential in addressing the corruption of imbalanced institutional power. Surveying health and human services professionals to discover if there is a widespread need for cross-collaboration with legal representation/civil counsel is a further area of needed research.
9. Empirical investigation is needed to determine how well ethics trainings, seminars, workshops, and conferences help professionals in relation to the corruption of imbalanced institutional power. Curriculums need to include how to intelligently apply ethics in practice, strategize a tactical defense before and after filing an ethics complaint, navigate bureaucratic red tape as a “whistleblower”, and determine options for legal recourse and civil action.
10. More data is required on the relationship between unions, providers, and the various professions within the health and human services sector particularly respecting how many

social workers, for example, are unionized, in which specific human services fields, and their distribution of employment between state, county, municipal, and private agencies. Also unknown is the extent to which trade unions play an adequate role in the U.S. in protecting and advocating for employment rights in the health and human services workforce at large to offset the corruption of imbalanced institutional power.

11. A multidisciplinary ethics committee made up of a small cadre of academics and professionals across the spectrum of health and human services may be of use in providing ethics training and consultation to local providers. A pilot program and controlled study would be required and findings might suggest the need for such an ethics panel to be subcontracted by the local state agency (auditing authority) through the state authority (e.g., Department of Health and Human Services). An extension of that body might conduct ethics audits of local providers, collect and analyze data germane to ethics (e.g., ethics complaints), and release that information in the form of white papers, press releases, announcements, and publicly available ethics scorecard reports on each provider.

Included in the above-proposed systems-focused research agenda outline are suggestions of fundamental principles and elements essential for consolidating the eleven identified areas/issues of research needs that encompass systems thinking to protect whistleblowers. With the agenda of ongoing investigation and subsequent empirical developments, it is hoped that more evidence can result in the establishment of a demonstrable action plan to: 1) determine how each respective field of professional practice in health and human services can progress from current orientation to minimizing the impact of the corruption of imbalanced institutional power; 2) tease out the practicality, transferability, applicability, or otherwise of the suggestions across different health and human services contexts. For example, how pragmatic is it to ask professional associations to play advocacy and ombudsman roles well beyond their mandates; or how viable is the creation of multidisciplinary ethics panels acting as government contractors to resolve whistleblower problems? With evolved interest in the corruption of imbalanced institutional power, empirical enquiry and scientific investigation may produce sufficiently clear findings to subsequently propose shaped up demonstrable action plans to systemically address the corruption of imbalanced institutional power in allied disciplines. And, critiqued for applicability, or not, to the theory/practice of each discipline,

depending on the distinct state, nation, employee protections, and legal/statutory procedural/statutory obligations and frameworks the practitioner is working/whistleblowing within.

Conclusion

Whistleblowers are likely to experience retaliation from their employer, which in the end, not uncommonly, amounts to employment termination. Once fired, practitioners face an uphill battle to rehabilitate their name-credibility, especially if seeking to rejoin the ranks of health and human services as a practitioner once more. Undoubtedly, an untold number of ethically justifiable whistleblowers have had their life trajectories permanently altered, due to becoming unemployable or being forced to change out of their respective practice field to gain employment elsewhere.

Justifiable whistleblowers ought not to be burdened with a sullied reputation. They should have institutional safeguards in place as a means of offsetting the corruption of imbalanced institutional power and protecting their name in the formal employment market. Due to the contribution of the corruption of imbalanced institutional power, systemic institutional change is needed, galvanized by the spirit of aspirational thinking for reform. As the unsatisfactory hiring-and-firing environment faced by whistleblowers is a civil, legal, ethical, and moral problem to be combatted with empirical investigation, education, law enforcement, legislation, and improved employee support and protection. With evolved interest in the corruption of imbalanced institutional power, research may produce findings to subsequently propose a concretized action plan to systemically address the corruption of imbalanced institutional power. As such, the proposed research agenda is outlined, which is set on the need for structuring a concretized action plan to bring to fruition subsequent developments in ethics discourse, training, practice, and policy discussion around the research agenda presented in this article so there can be some hope for whistleblowers facing a different reality; one that is more forgiving in the job market, even after being fired.

References

- Alford, C. F. (2002). *Whistleblowers: Broken lives and organizational power*. Ithaca, New York: Cornell University Press.
- Ash, A. (2016). *Whistleblowing and ethics in health and social care*. Philadelphia, PA: Kingsley.

- Bolles, R. N. (2017). *What color is your parachute? 2017: A Practical manual for job-hunters and career-changers*. New York: Ten Speed Press.
- Committee on Homeland Security and Governmental Affairs, United States Senate (2015). *Tragedy at Tomah: Initial findings*. Retrieved from https://www.ronjohnson.senate.gov/public/_cache/files/682738d7-c7b0-46fa-8aca-d516724272ee/tragedy-at-tomah-initial-findings.pdf
- Committee on Homeland Security and Governmental Affairs, United States Senate (2016a). *Dr. Chris Kirkpatrick Whistleblower Protection Act of 2015* (Report No. 114-262). Washington, DC: U.S. Government Publishing Office.
- Committee on Homeland Security and Governmental Affairs, United States Senate (2016b). *Improving VA accountability: Examining first-hand accounts of Department of Veterans Affairs Whistleblowers* (S. Hrg. 114-484). Washington, DC: U.S. Government Publishing Office.
- Committee on Homeland Security and Governmental Affairs, United States Senate (2017). *Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017* (Report No. 115-44). Washington, DC: U.S. Government Publishing Office.
- Devine, T., & Maassarani, T. F. (2011). *The corporate whistleblower's survival guide: A handbook for committing the truth*. San Francisco, CA: Barrett-Koehler.
- Dilworth, S., Higgins, I., Parker, V., Kelly, B., & Turner, J. (2013). Finding a way forward: A literature review on the current debates around clinical supervision. *Contemporary Nurse*, 45(1), 22-32.
- Hoge, M. A., Migdole, S., Farkas, M. S., Ponce, A. N., & Hunnicutt, C. (2011). Supervision in public sector behavioral health: A review. *The Clinical Supervisor*, 30, 183-203.
- Hughes, L. (1951). *Montage of a dream deferred*. New York: Holt.
- Kerr, D., & Rivero, M. (2015, April 23). Whistleblower trauma, recovery and renewal. *Government Accountability Project*. Retrieved from <https://www.whistleblower.org/blog/100323-whistleblower-trauma-recovery-and-renewal>
- Lipman, F. D. (2012). *Whistleblowers: Incentives, disincentives, and protection strategies*. Hoboken, NJ: Wiley.
- Miceli, M. P., Near, J. P., & Dworkin, T. M. (2008). *Whistleblowing in organizations*. New York: Routledge.
- Pope, K. S. (2017). *Five steps to strengthen ethics in organizations and individuals: Effective strategies informed by research and history*. New York: Routledge.
- Rothschild, J., & Miethe, T. D. (1999). Whistle-blower disclosures and management retaliation: The battle to control information about organization corruption. *Work and Occupations*, 26, 107-128.
- Schmidt, E. A. (2012). Clinical supervision in the substance abuse profession: A review of the literature. *Alcoholism Treatment Quarterly*, 30, 487-504.
- Slack, D. (2015, April 12). For one whistleblower, getting fired was too much. *USA Today*. Retrieved from <http://www.usatoday.com/story/news/2015/04/12/va-whistleblower-killed-himself-after-dismissal/25587367/>
- United States Office of Special Counsel (September 14, 2016). An examination of VA's misuse of employee settlement agreements. Retrieved from <https://osc.gov/Resources/Testimony-Bachman-9-14-2016.pdf>
- Whistleblower Protection Act. (1989, as amended 2007). 5 U.S.C. §2302.

Acknowledgments: The author would like to thank Samuel J. Knapp for his invaluable comments.

Competing interests: none

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Publication date: Feb 14, 2019