

WHEN THE WHISTLE BLOWS:

Successful resolutions start with effective policies.

BY PETER B. REILLY, CPA, CVA



In a scene from the movie *To Have and Have Not*, Lauren Bacall's coo, "You know how to whistle, don't you, Steve? You just put your lips together and ... blow," remains one of the most provocative and tantalizing scenes in movie history. Bacall certainly made whistling seem easy, and Harry "Steve" Morgan (Humphrey Bogart) also whistled effortlessly as Marie Browning (Bacall) sauntered from the room. A lesser man may have perhaps cowered or, at the very least, reached for a cigarette.

It seems that not much has changed in the last 70 years. Since the making of *To Have and Have Not*, whistleblowing remains emotionally charged for some, of little bother to others and, in some instances, suppressed. The recently released "Report to The Nations on Occupational Fraud and Abuse: 2014 Global Fraud Study" from the Association of Certified Fraud Examiners (ACFE) found that the number one fraud detection measure continues to be employee "tipoffs." More than 42 percent of all fraud detections in 2014 were the result of employee tipoffs, whereas internal and external audits combined only discovered fraud in less than 18 percent of all cases. Even worse, external audits resulted in uncovering misappropriation of assets in only 3.3 percent of all detections. These misappropriations resulted in an average loss of \$185,000 to an organization.

The continuation of this trend should amplify the importance of listening to employees. The ACFE report states, "Tips were the most common detection method for organizations with and without hotlines, but the benefit was much more

pronounced in organizations with them." Even so, organizations that are aware of the effectiveness of employee tipoffs still do not develop and implement effective whistleblower policies. All too often, the whistleblower is seen in a negative light and is treated with disdain by members of the organization.

Most fraud cases included in the ACFE 2014 Report occurred in the banking and government sectors, with average losses in the \$180,000 range. If wasteful government spending is indeed at a high level, one would think discouraging fraudulent activities by providing an effective whistleblower policy would be of paramount importance. Unfortunately, recent cases have suggested otherwise.

The federal government recently settled a whistleblower retaliation complaint filed by a former C&O Canal chief ranger. The ranger had suffered nearly eight years of reprisals from the U.S. National Park Service (his employer). The reprisals started once Robert M. Danno, the ranger, complained to the U.S. Department of the Interior's Inspector General about improprieties in a tree-cutting arrangement along the scenic Potomac River. After reporting these improprieties, Danno was removed from his chief ranger position; stripped of his authority to carry a gun; wrongfully accused of theft, which led to criminal charges (of which he was acquitted); and eventually reassigned to issue picnic permits. In 2006, the Interior Department's Inspector General found that the Park Service had violated its own policies, as originally reported by Danno, and continued to marginalize

him and continually threaten to fire him. This gross and perverse retaliation is exactly the kind of behavior that a flawed whistleblower policy produces, which defeats the implementation of professional development programs that employees expect as part of their workplace benefits.

Hundreds of notable whistleblower cases are listed in Wikipedia. Some have resulted in favorable outcomes, while others, not so much. Even in our office, we experienced an inability to provide a viable tool for employees willing to point out discrepancies in the workplace. Some time ago, our then-managing partner placed an old, bright red mailbox in the kitchen to serve as a "suggestion box." Ideas were percolating tirelessly. During the course of one of our staff member's annual reviews, it was discovered that the staff member had placed a suggestion in the box several months prior and, apparently, no one was monitoring the box to determine if there were any suggestions given. The lesson? Should you supply such a hotline for your employees, make sure the box is checked regularly and that suggestions are taken seriously.

The Office of Personnel Management's (OPM) "2013 Federal Employee Viewpoint Survey" (with similar numbers for 2014) shows "...no slowing of the ongoing decline in overall employee satisfaction across the federal government." The government-wide "global satisfaction" index measures an employee's willingness to recommend their organizations as a good places to work and indicates their overall job satisfaction. The global satisfaction ►



**Employee tipoffs
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index across all federal government sectors decreased from 63 percent positive responses in 2012 to 59 percent in 2013. In a 2010 survey, the index stood at 67 percent. Overall job satisfaction dropped from 68 to 65 percent, and recommending the organization as a good place to work decreased from 67 to 63 percent as pay satisfaction slid from 59 to 54 percent in 2013. Hopefully, the government is taking measures to fix this trend. A workplace environment where more than two thirds are satisfied with their job is the kind of workplace that cultivates and enriches employees.

As reported in *The Washington Post*, less than a third of employees say they think promotions in their offices are based on merit. When it comes to trusting senior leaders to maintain “high standards of honesty and integrity,” only 49.5 percent agreed, down from 53.6 percent in 2012. Only 38 percent of employees agreed that their senior leaders inspire a high level of motivation and commitment to their jobs, down five points from 2012. Just half say senior leaders maintain high standards of honesty and integrity, down five points from 2012. Colleen M. Kelley, president of the National Treasury Employees Union, said in a statement that the 2014 survey “should serve as a wake-up call for federal managers to find creative ways within existing constraints to improve morale and employee retention.”

WHISTLEBLOWING AND THE LAW

Congress enacted the Whistleblower Protection Act of 1989 to protect whistleblowers from retaliatory personnel authorities. More recently, in 2012, the Whistleblower Protection Enhancement Act was passed and the Presidential Policy Directive was put into place, prompting numerous revisions to the Whistleblower Protection Act. Sen. Charles Grassley (R-Iowa), an original co-author of the 1989 Act and advocate for better whistleblower protection, believed

adherence to these enhanced revisions would help reverse the trend and at least make for a better workplace.

In March 2014, Grassley announced plans to create a Senate Caucus to uphold the Whistleblower Protection Act. He was quoted as saying whistleblowers are “... often treated like skunks at a picnic,” then adding, “Whistleblowers are a very important part of government operations. By exposing waste, fraud and abuse, they work to help keep government honest and effective. For their loyalty, they are often penalized, fired, demoted and harassed.”

But it’s not all bad news. Recently reported in *The Washington Post*, when Thomas Perez took over as U.S. Secretary of Labor in July 2013, he and his leadership team set out to raise morale at an agency that had ranked near the bottom of the “Best Places” list for several years. They started one-on-one meetings with employees; provided a suggestion box for new ways to do business; and implemented a program that offers employees a chance to work for several months in a different office or at a different job within the agency. The Department of Veterans Affairs (VA) earned certification for whistleblower protection, a sign that the agency is correcting widespread problems with retaliation against employees who report wrongdoing. VA said it earned the certification in part by requiring supervisors, managers and executives to complete training on whistleblower rights and protections every two years.

And a recent article in the American Institute of CPAs’ *Journal of Accountancy* suggested communicating to employers the importance of implementing a “hotline,” referring to it as an “open line” or “help line,” and ensuring the policy is not circumvented by establishing standardized steps.

Lack of management review accounts for 23 percent of detected frauds.

THE PROBLEM WITH BULLYING

Besides ineffective whistleblower policies and abuse, bullying can wreak havoc on employee morale. Anti-bullying programs have long been established in most of our nation's grammar and high schools. Perhaps we shouldn't have been surprised that the NFL will be the next to implement a nationwide anti-bullying program. In 2013, Coach Joe Philbin of the Miami Dolphins took the blame for allowing the environment within his organization to reach a toxic point. Philbin also acknowledged that the Jonathan Martin/Richie Incognito incident took a toll on the entire Miami Dolphins organization.

After the NFL's Independent Council Report on the Martin/Incognito matter, owner Steven Ross stated, "We must work together toward a culture of civility and mutual respect for one another." Further, Dolphins owner Stephen Ross has contracted with New York University School of Law, the New York University Center for Sports and Society, and the Jackie Robertson Foundation to implement "a curriculum which emphasizes accountability and educates athletes on a standard code of conduct, appropriate use of language, and the elimination of disrespectful and unacceptable behavior in sports, including discrimination or harassment because of race, gender or sexual orientation. We are also exploring possible legislation and conduct pledge that would be instituted in all organized sports throughout the country to elevate the core value of respect."

In any event, what happened to the Miami Dolphins organization has turned out to be a very expensive

proposition. Few things are as dear to an NFL organization as early draft picks. Benjamin Graham, regarding investing, once wrote, "...that price is what you pay and value is what you get." In the case of Jonathan Martin, the son of two Harvard graduates, the perceived value to the Dolphins must have been both brawn and intelligence. With the left side of the Dolphins offensive line in rehabilitation, and millions of dollars down the drain, we are left to wonder about a good investment gone sour. Part of any organization's professional development program must be to listen to what is being said and understand what is being seen.

This isn't a case of the old adage that "boys will be boys," nor that fans just don't understand life in the locker room. Instead, this is an enterprise that has condoned an environment in which employees are not treated with mutual respect.

All too often, today's corporate mission statements are catchy taglines serving more as advertisements rather than reflecting the entities' core values. On the TV show "Undercover Boss," many times the owner is shocked by the abusive behavior of one of his/her managers. After the occasional mishap, the aforementioned managing partner used to say, "...there is the company I think I run, and there is the company I actually run." It all boils down to a lack of management connectivity. Even the ACFE report states, where ineffective internal controls contributed to 37 percent of the detected fraud, lack of management review accounted for 23 percent of detected frauds. Basically, management needs to stay connected.

IT PAYS TO PAY ATTENTION

Next time you are walking down the hall for a cup of coffee, ask yourself: Is there bullying taking place in our corporate departments? Is our language reflective of our desired culture? Are our environment and interactions reflective of our mission? Is someone stealing? Money? Integrity? Image? How would we react to the fraud of one of our most productive managers bullying those in his/her department? Are preventative measures in place? How can damage done by those who act contradictory to our mission be rebuilt? Fraudulent activity can be quantified through good forensic accounting once a whistleblower policy is in place. However, how much cost or damage is caused by bullying and contrary behavior?

Not all organizations are in a position as fortunate as the Miami Dolphins to assemble a team of universities, foundations, and lawyers to repair the damage done to their mission and reputation. We need to follow in the footsteps of Harry Morgan, who both whistled and listened. ■



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