

*"All that is needed for evil to prosper is for people of good will to do nothing"*—Edmund Burke

# *The Whistle*



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## Whistle Blower



### They call it enhancing whistleblower protections — I say phooey!

Cynthia Kardell

THE SUBMISSION (below) went to the Senate Economics Legislation Committee late February. It's about the Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017 which was tabled on the last sitting day of federal parliament last year. It has been published as submission number 29 on the Senate website along with all the others, which make interesting reading if you've some spare time because they give you a sense of what we're up against: <http://goo.gl/jVcmK4>.

For example, AJ Brown, the Griffith University professor whose name many of you will know, optimistically urges the committee with "it can still achieve its potential as the first stage of a comprehensive, robust and world-leading legal framework as recommended by the Committee and promised by Government". He's clearly hoping — there were no promises! University of Sydney professor David Chaikin gave it his personal imprimatur, judging it a "balanced but vastly improved approach to protecting whistleblowers", "a series of eminently practical measures to assist whistleblowers in seeking redress against retaliatory conduct" that "does not create a new expensive bureaucratic organisation to oversee the regulatory regime. It does not adopt 'pie in the sky' solutions that are inappropriate or unworkable."

Pie in the sky indeed! But both men were appointed to lead the expert advisory panel the government has set up to assist it in its deliberations, so it is more likely than not that those "pie in the sky solutions" will indeed be kicked off into the long grass. But that to one side, we've pursued our ideas and experience dating back 25 years, because we are in it for the long haul. We're chipping away knowing that conservative governments, more than most, are very reluctant to give ground on any reform that would deny them absolute control — even though soci-

ety is way out in front in this. We haven't got this far by doing what we're told. Going to the media at our call, finding better ways to deprive them of a target — these are ways in which we can shape reform, by doing what we think the law should allow. Here is a slightly edited version of my submission.

The explanatory notes to the above Bill record that the public response to the Government's *consultation process* around its inquiry into whistleblowing protections in the corporate and not-for-profit sectors, which concluded in February 2017, "overwhelmingly favoured amendment of the existing corporate whistleblower regime." The inquiry also found that those same laws remained "largely theoretical with little practical effect." I agree, and more fiddling around the edges won't alter that effect.

The *consultation process* produced 35 recommendations to strengthen the corporate regime and only some of the more rudimentary are included in this Bill, which is intended to amend the:

Corporations Act 2001 to consolidate and broaden the existing protections and remedies for corporate and financial sector whistleblowers; Taxation Administration Act 1953 to create a whistleblower protection regime for disclosures of information by individuals regarding breaches of the tax laws or misconduct relating to an entity's tax affairs; and Banking Act 1959, Insurance Act 1973, Life Insurance Act 1995 and Superannuation Industry (Supervision) Act 1993 to make consequential amendments.

This approach — even with the odd sweetener drawn from public sector protections — is a failure of imagination that ensures that they remain "largely theoretical with little practical effect."

The more significant recommendations — the introduction of a standalone consolidated whistleblower protection act for the private sector, establishing an independent protection authority and a rewards system for whistleblowers — are capable of

delivering real reform but are on the back burner until the expert advisory panel the government has appointed to assist it in its deliberations delivers a proposal that the government can support.

If the Bill is intended to fill the gap, it is not worth the time it took in drafting: tidying, consolidating, harmonising existing laws that have no practical effect will not alter that effect. If it is intended as a foil for the banking royal commission, it won't do that job either.

Whistleblowers Australia supports the introduction of an overarching act that establishes a standalone "public interest" disclosure agency (PIDA) to protect and reward whistleblowers — in *both* sectors — because the public-private divide is, and has always been, a false dichotomy.

For years we have allowed our governments to narrow and dictate the idea of what constitutes the public interest, to limit the impact of our demand on them for greater openness, accountability and transparency as they strategically vacate the space. First it was outsourcing, then public-private partnerships, privatisation and everything in between — which is why the events that forced the banking royal commission should tell us why it was always going to fail — with openness, accountability and transparency gone missing in action in both sectors.

Enough! The public's interest has, and always will be, in realising more, not less, openness, accountability and transparency in all of our affairs as a civil society. It is a common concern among citizens and always a work in progress, whenever a whistleblower calls something into question.

We are calling this Bill into question, because of what it does not do.

It would allow a whistleblower to explain the wrongdoing that s/he had uncovered in seeking legal advice, without it being seen as a breach of confidentiality laws. It also widens the circle of those who are permitted to disclose the whistleblower's allegations and their identity without it being an offence. These hoary old ideas around confidentiality have had their day: whistleblowers are at far greater

risk of reprisal when those who “know” are not publicly known. It creates a clubby “them and us” — in secret — which can be manipulated to cover-up wrongdoing and normalise that behaviour. Take that secrecy with its vicious opportunities away and you are rewarded with a culture of doing a good job for the whistleblower, for the right reasons.

This Bill would also allow an “emergency” disclosure to be made to a federal politician or their office or the media, but only in “certain” circumstances and only after a “reasonable” time. These are only baby steps, which is all the more extraordinary when you consider the committee’s recognition last September that “whistleblower protections remained largely theoretical with little practical effect in both the public and private sectors” and that, by and large, those same protections have been operating in one form or another in state and territory jurisdictions for more than 25 years.

It is too little, too late.



Chris Masters, the journalist behind *The Moonlight State*, with AFP officer David Moore, assigned to protect Masters from corrupt police

In 1987 a small band of police officers and their families, took the enormous risk of trusting a journalist with their identity and Queensland’s dirtiest secrets. The result was *The Moonlight State*, perhaps the most explosive true story ever told on Australian television, perhaps because that small band remained unknown until last year. It led to the Fitzgerald inquiry and major reform — something that still sparks pride in most. In 2005 a jury found a former NSW National Parks and Wildlife Service whistleblower not guilty of lying to an inquiry into the Thredbo landslide. Eighteen people died when two ski lodges at the New South Wales resort collapsed in July 1997. Just this last Valentine’s Day a

former Queensland police sergeant who leaked footage of officers bashing a handcuffed man in a Gold Coast station basement was found not guilty of misconduct by a majority 11–1 jury verdict following a six-day trial at the Southport district court.

After thirty years this Bill should be the one to recognise that society wants no truck with spurious claims of misconduct, when it’s clear that the wrongdoing would have gone unchecked had the authorities had their way. And that whistleblowers should be entitled to go to their elected representatives, the media or a legal representative *on their call, at a time of their choosing* — when it is clear to them that the employer has no respect and is shutting them down. It should not be a question — as it is — of whether you sat dutifully and waited, even for a reasonable time! The employer, for failing the public by targeting the whistleblower rather than the wrongdoing, should be carpeted immediately upon the wrongdoing being exposed by the press.

The problem is that everyone in authority is still ducking the issue and it is not okay — in 2018 — when the committee has found that “whistleblower protections remain largely theoretical with little practical effect in either the public or private sectors.”

Whistleblowers come to grief because their employers still control the opportunity — in secret — to ignore or even cover up wrongdoing to control and perpetuate the myth that they are perfect in all things. They use every diversionary tactic in the book to turn on others, drag it out and wear their critics down. Impatient, dismissive, sneering and outrageous, even vicious accusations about others: we’ve seen it all and more. It is completely unacceptable as a response and an abuse of position and power.

Strongly ethical organisations and people don’t do that: they know that they are not perfect and they are not afraid in knowing that. They may seem to be in the minority, but they are not. They are the ones who openly and regularly *make* themselves accountable to you: they don’t wait for *you* to *hold them* to account. They meet a challenge by empowering you, their erstwhile critic. They know it will only make them stronger.

These are the instincts and behaviours that we need to respect and demand of others and we can make a start by legislating to ensure that executive and senior staff have no part to play in deciding whether or not to investigate the allegations of wrongdoing. That power should be delegated to another, who is legally independent of the executive body for the work they do: as should an in-house counsel be in support of a whistleblower. These roles should come with the obligation to ensure that whistleblowers are openly respected, consulted and even co-opted to the investigation depending upon the circumstances.

Executive and senior management must be held personally liable by their shareholders and employers for coercing others to cover up wrongdoing, failing to provide for open reporting and review (see below) and the failure to openly validate and reward whistleblowers. Financial penalties should apply, commensurate with the harm done whether by act or omission.

Open reporting and ongoing local review are the bedrock of a project of this kind. Legislation could require organisations to, for example, log each disclosure (with a brief description of the issue for investigation and every subsequent action and report) on the organisation’s website as and when it occurs, provide for regular, local reviews of the outcomes, and ensure that alleged wrongdoers are either openly held to account and penalised or fully exonerated as the case might be.

Whistleblowers should be encouraged to disclose internally, but have the legal right to disclose externally *at their call*. External disclosures become necessary when their trust in the system is trashed by the executives and managers who coerce others in secret to bury the allegations with the whistleblower. In a system where openness, accountability and transparency flourish, so will trust, and thus the need to go to the media will not be there.

We like to imagine ourselves as an open safe democracy where everyone gets a fair go. I think it’s time we gave whistleblowers a fair go, in the interests of having openness, accountability and transparency flourish in the wider society.

### Free after six years of pain

**Honest cop who blew whistle has  
been cleared of misconduct charge**

Greg Stolz

*Courier-Mail*

15 February 2018, pp. 4–5

HE WAS the honest cop who blew the whistle on the “disgraceful” bashing of a handcuffed young man in the Surfers Paradise police station basement — and was criminally charged for his troubles.

But former Surfers Paradise police sergeant Rick Flori walked free from court yesterday after being found not guilty of misconduct for leaking CCTV footage of the bashing to *The Courier-Mail*.



Former Queensland police officer Rick Flori and social justice advocate Renee Eaves after Flori was found not guilty of misconduct. Photograph: Dave Hunt/AAP

While the four officers involved in the brutal assault on chef Noa Begic in January 2012 escaped prosecution, Mr Flori faced seven years’ jail if he had been convicted.

Screams of relief rang out and tears flowed among Mr Flori’s supporters in the public gallery of Southport District Court when he was acquitted in a rare 11–1 jury decision after a week-long trial.

Jurors were unable to reach a unanimous verdict after about eight hours of deliberations. But asked by Judge David Kent QC if they could return a majority verdict, they found Flori not guilty.

“They (police) attacked the wrong person,” Mr Flori told journalists outside court.

“I had faith in the jury. They came up with the right result. I don’t regret a minute of it and I’d do the same thing

over and over again.” The trial heard that Mr Flori was charged after *The Courier-Mail* broke the story of the Begic bashing in February 2012 under the headline “Justice takes a beating.”

Exclusive CCTV footage obtained by the newspaper and played at the trial showed one officer, Senior Constable Ben Lamb, punching and kneeling Begic, who had been arrested for public nuisance in Cavill Mall and had his arms handcuffed behind his back.

Another officer, Senior Sergeant David Joachim, was shown on the tape washing Begic’s blood from the concrete with a bucket of water.

During the trial, Mr Flori admitted to leaking the CCTV footage to the newspaper, but denied Crown claims that he had done so as part of a personal vendetta against Joachim, who had beaten him for a promotion.

Crown prosecutor Todd Fuller told the jury that Mr Flori was “particularly aggrieved” at being overlooked for a senior sergeant’s position and had corruptly released the video to damage Joachim.

But defence barrister Saul Holt QC successfully argued that Mr Flori’s only motivation was to “blow the whistle on appalling conduct.”

“There’s nothing corrupt, nothing dishonest, about allowing the public to see footage of a disgraceful police bashing that would have otherwise never seen the light of day,” Mr Holt told the jury on the opening day of the trial.

“Six years later, the only person charged with a criminal offence is Rick Flori, not the people (police) you see on the tape.” Lamb told the court the force he had used against Mr Begic was “totally excessive” and he had made “incorrect choices.” “This is a clanger of a day for me,” he said. “I have now accepted that was totally excessive and I should have used a restraint technique.” But Lamb, who was given a suspended dismissal over the incident, denied Mr Holt’s suggestion that there was a culture of brutality among Surfers Paradise police.

“Nonsense, absolute nonsense,” he said.

Joachim told the court he did not

see any assault on Mr Begic either on the night of his arrest or in video replays, and said he washed away the blood because it was a “biohazard.”

Under cross-examination, he said the force used against an allegedly drunk and aggressive Mr Begic was “proportionate.” “I’m saying that it wasn’t brutal,” he told the court.

Joachim, who the court heard had been investigated over a series of unsubstantiated brutality and corruption complaints, also rejected suggestions that he had tried to cover up the bashing.

The court heard Mr Begic withdrew an assault complaint against police soon after receiving a financial settlement.

Mr Begic did not give evidence in the trial.

Speaking outside court, Mr Flori said he felt vindicated and thanked his “thousands” of supporters. Mr Flori, who quit the police service last November after almost three decades in the job, said he would return “but only as Commissioner.”



Rick Flori

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### Cops still get square

Terry Sweetman

*Sunday Mail*, 18 February 2018, p. 55

I’VE GOT A pretty good handle on the case of former police sergeant Rick Flori. I should because I’ve been writing about it for about six years.

The facts are fairly simple. One night in January 2012, a bunch of policemen gave a handcuffed Noa Begic a nice old touch-up in the basement of the Surfers Paradise Police Station. And duty officer David Joachim played Sadie and washed Begic’s blood off the floor with a

bucket of water.

Exactly what brought Begic to the basement in the first place was never quite revealed or tested because the original public nuisance charges were dropped.

One of the officers involved, Benjamin Lamb, who was captured on video kneeling and punching Begic, alleged he was drunk and aggressive.

Whatever happened, four of our finest were ultimately involved in what looked awfully like the administration of summary justice and washing away blood.

All the while they brazenly disregarded the fact that the in-house video camera was rolling (or whatever closed-circuit TV does).

The imagery famously found its way into the hands of *The Courier-Mail* and then onto social media, where it was gleefully devoured.

In summary, nothing much happened to two of the wayward wallopers. Lamb and Joachim were suspended, pending an Ethical Standards Command investigation, and both eventually left the force.

Begic settled a civil lawsuit against the Queensland Police Service out of court. At the time, there was conjecture about a six-figure settlement, which we taxpayers kindly bankrolled.

Begic declined to press charges after receiving a payout from the police so no action was taken.

This, despite the fact that the Crime and Corruption Commission itself conceded that a prosecution for assault and other offences could begin without a criminal complaint.

The one guy who did feel the full weight of the law — and eventually enjoyed the good sense of a jury — was former sergeant Rick Flori, the man who leaked the explosive video on a USB stick.



Queensland Police officer Sergeant Rick Flori receives a sympathetic message from a young supporter as he arrives at Southport Magistrates Court. Picture: AAP Image/Dan Peled

He was charged with misconduct in June 2015, quit the force last November, and went to trial this month. One of the misconduct charges against him was struck out during the trial and he was acquitted by a majority verdict on the other.

It was a good result after six very bad years that just about destroyed a career policeman, effectively shuffled two others out of the force, and possibly left a couple more with black marks on their records.

But what I don't understand is why Flori felt the need to leak the video in the dead of night.

Ethical Standards was on the case on February 8, 2012, and Flori lit the fuse two days later.

It was claimed during the trial that the leak was part of a vendetta against Joachim, who was his promotional rival.

Whatever his motives — and his counsel said they were pure — it's difficult not to conclude that Flori had little faith in Ethical Standards to properly do its job.

That is a devastating reflection on the relationship between police officers and, eventually, the Queensland Police Service, after decades of retrospection and self regulation going back to before the Fitzgerald Inquiry.

The other thing I don't understand is why the QPS seemed so relentless in its pursuit of Flori but lukewarm in seeking retributive justice for Begic and punishment for the officers involved.

It is again difficult not to suspect that somewhere along the line, the old police culture of containment, secrecy and get-square has exerted its baleful influence. The machinery of investigation and discipline within the police service has again been found wanting when put to the test.

Whatever the undercurrents in the QPS and in the rank and file, the fact remains it took a dogged, maybe bloody-minded and cantankerous, old cop to bring the truth to light.

But he paid a price that included a possible seven-year jail term. His ordeal and the vile claims laid against him are salutary warnings to prospective whistleblowers in the police, public service, and even private enterprise. But his acquittal should give them some heart.

## Thank the whistleblowers

**From Enron to Cambridge Analytica to the CBSE paper leaks, whistleblowers have played an important role in the fight against corruption. They need protection.**

Ajit Ranade

*Mumbai Mirror*, 31 March 2018



Union Law and IT Minister Ravi Shankar Prasad has said the government has sent notices to Facebook and Cambridge Analytica on the data-breach issue

The whistleblower sent emails, faxes, WhatsApp messages and a couriered letter to the CBSE office days before the Class XII Economics exam, warning the board that the question paper had been leaked. Thus, there was adequate time to take action. But board officials did not swing into action until it was too late, and the exam paper was not scrapped. However, the evidence was strong; there clearly was a paper leak. Similarly, the Class X Mathematics paper leak was also revealed before the exam, thanks to the whistleblower. Now the whole issue has blown up, since it affects 2.8 million students who will likely have to appear for a re-exam. If there was no whistleblower action, we wouldn't have known about the malfeasance in the first place.

Earlier in the week, there were newspaper stories about a possible conflict of interest at the highest level, in a loan given by ICICI Bank to the Videocon Group. This, too, was based on a whistleblower's version, which was published on his blog two years ago. Why it took two years for the matter to surface in headlines is not known. But the blog was in the public domain. Whether the allegations are proved are not, the role of the whistleblower in this cannot be overstated.

But the biggest breaking story which hit headlines all over the world

was the revelation by another whistleblower, Christopher Wylie, the former director of research at Cambridge Analytica (CA) in the UK. Wylie claimed his former employer harvested data on 50 million Facebook users and gave it to a client, who then used it in the presidential election campaign in the US. This has created a furore, and charges are flying about a breach of election laws. Already Facebook is under attack for having enabled Russians to hack the presidential election, although this is being fiercely disputed.

Wylie claimed that CA had also worked on election campaigns in India for many years. His former employer, along with an Indian company, might have worked on six elections between 2003 and 2012, including the Lok Sabha election of 2009, by using voter data to make unauthorised pitches. This leak by the whistleblower caused a huge political storm in India, and the IT minister formally asked CA and Facebook to confirm or deny whether voter data had been misused or compromised in any way, and if voter privacy had been violated.

Data leak and privacy issues have suddenly become mainstream topics in India and are being hotly debated. This has given an extra push to the critics of Aadhaar [Indian identity number], who feel that the UID scheme is far too intrusive and dangerous in its scope and application, and potentially harmful to civil liberties. Unlike Facebook, which can be taken to court for privacy violations or for illegally selling or compromising personal data, you cannot sue the government in case of an Aadhaar breach. The founder and CEO of Facebook published full page advertisements in the UK, US and Europe, apologising for the privacy scandal. And Facebook's stock price nosedived in the wake of the scandal.

It was also a whistleblower who exposed a massive fraud at Enron, a company which was the darling of Wall Street, having won the best company award for many years. Enron was eventually indicted for criminal actions and fraud. Yet another whistleblower exposed wrongdoings at Worldcom. In fact, in 2002, *Time* magazine named three women whistleblowers as Persons of the Year. Thanks to these major exposés, US lawmakers passed a

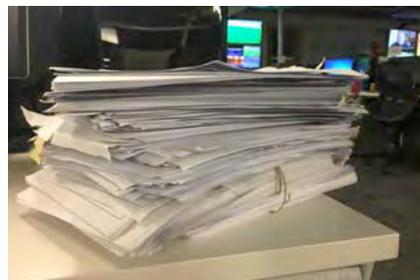
stringent law giving immunity to whistleblowers if they exposed wrongdoing to their own bosses or to the government. Until this law came into force, whistleblowers had to choose between reporting misdeeds and committing "career suicide." Nobody likes a whistleblower, and that's why they face a dilemma. It's the rare organisation that celebrates or honours a whistleblower. But the US law was, in fact, strengthened after the 2008 Lehman-induced financial crisis. Then too, it later turned out, there had been a code of silence, and many people, including bankers, auditors, ratings agencies and regulators who should have known better, kept their silence.

Any system that gags whistleblowers is setting itself up for failure and disaster. Of course, companies are legitimately apprehensive about disgruntled employees who may blow the whistle with false charges. But the solution to that is not to suppress whistleblowing, but to ensure an atmosphere that reduces the chance of employees being disgruntled. India's whistleblower protection law, passed in May 2014, is not strong enough, and was further diluted in 2015. It applies only to the public sector and government, and does not extend to the private sector. We badly need to create an environment where reporting on misdeeds by insiders should not put one's life in danger. Whistleblowers play an important role in the fight against corruption.



## The Cabinet Files: How classified documents were found at a Canberra second-hand shop

John Lyons  
ABC, 3 February 2018



Some of the documents contained in The Cabinet Files (ABC News)

For a key moment in one of the biggest national security breaches in the nation's history, it was an unlikely setting.

At a house outside Canberra, the flies were buzzing, the dogs were hanging around and a serious amount of steak and sausages was sizzling away on the stove.

Waiting for their mountains of meat to cook, two men sat at a table drinking beer and chin-wagging about the affairs of the nation.

One was journalist Michael McKinnon, the ABC's Freedom of Information editor. The other was a bushie who had lived in and travelled to different parts of the country.



The two men had struck up an instant rapport — so much so that when the meat was put on the table McKinnon asked: "Don't you have any vegetables?"

"No vegies at the moment," the man replied. "The wife's away right now and she's the one who buys vegies. I can cook you some onions if you like?"

That night would prove a decisive moment in one of the most extraordinary episodes in Australia's national

security history, with the release of hundreds of highly-classified documents.

This week, the ABC agreed to return to the Government the hundreds of documents which had ended up in the bushie's shed.

The return of the documents came after an agreement which protected the bushie.

### Two cabinets for \$10 each

The story begins at a second-hand auction house in Canberra in the middle of last year.

The man cooking the steak and sausages had gone to Canberra to buy some filing cabinets — he knew that you could always get good furniture at the shops around the capital which sold used government supplies.

#### Some revelations from the files:

The Abbott government considered banning anyone under the age of 30 from receiving unemployment benefits

Then Immigration Minister Scott Morrison agreed to enquire about slowing ASIO security checks for asylum seekers, potentially affecting what visas they could receive

The Howard government gave serious consideration to removing an individual's unfettered right to remain silent when questioned by police

He'd taken a ute so that he could buy some filing cabinets. He'd bought several — all empty — when the man who owned the shop told him there were a couple he could have at bargain-basement price.

"Those two over there you can have for \$10 each," he told the man.

Pretty heavy, indeed — heavy with national security secrets.

The filing cabinets had been in the Department of Prime Minister and Cabinet and contained documents from the bureaucracy which detailed cabinet deliberations for every prime minister between John Howard and Tony Abbott.

Back home, the man put them in his shed. And so, the filing cabinets sat week after week, month after month — some of the most sensitive material relating to security — sitting in a musty shed outside Canberra.

### Meeting Michael McKinnon

Finally, the man decided he'd organise his new cabinets — he drilled holes in the locks of the two that had no keys.

He was stunned by what he found. He sat in his shed reading first-hand accounts of the Howard, Rudd, Gillard and Abbott governments.

"He's a completely apolitical man," McKinnon said.

"He thinks that all politicians need to lift their game, but as he read some of the documents showing that some politicians had been saying one thing and doing another he decided the public had a right to know all of this stuff."

But what was the next step? He wanted some of the material in the public domain, so began researching journalists.

He discovered that someone called Michael McKinnon had been to courts and tribunals more than 100 times fighting for the release of documents.

McKinnon had been as far as the High Court fighting for documents. He'd been appointed the nation's first FOI editor — by *The Australian* — and was clearly committed to documents being published rather than suppressed.

McKinnon would turn out to be a perfect choice — before university he'd worked in the bush, where he would round up cattle on horseback for a year.

He knew how to talk to someone from the bush, but he also knew his way around the capital — if the public service had such a thing as royalty, McKinnon's family would be in it.



ASIO officers deliver safes for the ABC to store The Cabinet Files in. (ABC News: Dan Conifer)

#### "This one was a cracker"

McKinnon was born and raised in Canberra — his father, W. A. (Bill) McKinnon, was secretary of the Department of Immigration in the 1980s.

He was also head of the Industries Assistance Commission and High Commissioner to New Zealand. His grandfather was Alan McKinnon, the Commonwealth statistician in the 1930s.

His brother is Allan McKinnon, a deputy secretary of the Department of Prime Minister and Cabinet who is currently in charge of national security for the Federal Government.

His other brother, John, is deputy director of the Australian War Graves commission and his sister, Margaret, is a senior executive in the Department of Human Services.

"I'd be embarrassed if I had to find a story by talking to my family," McKinnon said. "They'd be embarrassed, I'd be embarrassed."

The man rang McKinnon, and they had their first phone call. McKinnon listened to an extraordinary tale, and at the end of that phone call said to the man: "Having dealt with thousands of documents, my first advice to you is seek your own legal counsel. You need to understand exactly what this might mean for you if we go ahead with this."

Several weeks later, the man called McKinnon again.

McKinnon then telephoned his boss, Craig McMurtrie, the ABC's deputy director of news.

"From that first conversation we were extremely conscious of the national security implications and continued to be mindful of that through the editorial process," McMurtrie said.

"But our job as journalists is to report good stories and serve the public, and this one was a cracker."



The files were later placed in a safe provided by ASIO, which the ABC could access. (ABC News: Danielle Bonica)

#### "This is the real deal"

McMurtrie sent McKinnon to Canberra. McKinnon would stay for the

night at the man's house. They sat up late drinking beer — the night of the steak and sausages.

"I remember sitting there with the fire going at night and looking at these documents and thinking this is the real deal," McKinnon said.

"I was stunned," he said, when asked his reaction when he saw the documents.

"As a 19-year-old I had worked in the Department of Prime Minister and Cabinet in the registry — the dead dull administrative unit that handles all the top secret files.

"I've seen thousands of government documents in my time, but here I am, sitting in the bush with the flies buzzing in a house he's built himself with a quintessential Aussie bush bloke and I'm thinking to myself this is real.

"Reading those documents that night, it was clear to me there was a public interest in the public knowing this material."

McKinnon called his colleague Ashlynn McGhee in the ABC's Canberra bureau.

"I'd worked with Ash before and she's a very, very good journo. I knew she'd work hard and that we could trust each other implicitly," McKinnon said.

Like the man in the shed, McGhee would have a rare glimpse into the nation's deepest secrets.

"This week Ash worked across platforms every day — I could not do that. I was in awe of what she did," McKinnon said.



Thousands of pages of documents, some marked "top secret", were obtained in the sold-off filing cabinets. (ABC News: Melissa Clarke)

### The three options

McGhee still remembers the first phone call from McKinnon about this group of documents.

"Michael told me that a guy went to an ex-government auction and picked up filing cabinets and inside there were Cabinet files," she said.

"I asked Michael to repeat what he was saying — he said it again and it all started to kick in. Everything started to kick in then but it was months before we got the documents.

"As the months went by and I heard nothing I thought that's a great story we're never going to be able to tell. It wasn't until late last year when Michael called me and said, 'Good to go! We've got 'em!'

"I turned to Bradders (Gillian Bradford, the ABC's Canberra bureau chief) and said, 'I've got to get out of here'. I went and picked up the documents in a big heavy dusty box.

"When I opened it, the papers were out of order and stuff [was] everywhere and I realised the enormity of what this actually was.

"My reaction was the same as everyone else when we broke the story of the two filing cabinets on Wednesday, except I had a few months to get used to it."

McGhee photocopied the documents, sending one set to McKinnon in Brisbane. They then indexed them, and would go through every single one of the documents.

Once they had authenticated the documents and ordered them, the ABC had three options: the first was to "do a WikiLeaks". The second option was to hand all the material to the police, and the third was to do journalism — go through the documents and examine whether there were stories of public interest.

Everyone involved in the process at the ABC agreed that any documents which could endanger public safety or national security if published would not be published.



ASIO takes custody of secret cabinet documents, obtained by the ABC

Instead, we focused on stories which, while embarrassing to certain political figures such as Kevin Rudd, Penny Wong, Scott Morrison and Tony Abbott, were clearly not of any security threat.

### "We decided to do the journalism option"

The "WikiLeaks option" would have been to put all of the documents online — the publish-and-be-damned model. This option was opposed from the start by the Canberra bureau and, later, ABC executives involved in the decision — the Director of News, Gaven Morris, Craig McMurtrie and myself.

"We decided to do the journalism option," Morris said.

"To me the first two options weren't journalism — we decided that we would do stories from the documents which were in the public interest and which did not damage national security in any way."

Like Morris, I too was opposed to the WikiLeaks option — I'd been appalled when WikiLeaks in 2016 did one of their "dumps" of thousands of documents which revealed information which in my view had no public interest.

As Associated Press reported at the time under the headline, 'Private lives are collateral damage in WikiLeaks' document dumps', WikiLeaks had published medical files belonging to scores of ordinary citizens while many hundreds more had had sensitive family, financial or identity records posted to the web.

AP reported: "In two particularly egregious cases, WikiLeaks named teenage rape victims. In a third case, the site published the name of a Saudi citizen arrested for being gay, an extraordinary move given that homosexuality is punishable by death in the ultraconservative Muslim kingdom."

Once the decision had been taken to publish only documents of public interest rather than those that included sensitive operational matters, the roll-out was planned.

Journalists contacted key people named in the documents, so they could respond to suggestions made in the documents or put them into perspective.

And so, last Monday, the first of the Cabinet Files was published.



ASIO officers retrieved papers in Canberra, Melbourne and Brisbane late on Thursday evening. (ABC News: Dan Conifer)

**“I think people have a right to know”**

By Wednesday, the ABC had published all the documents that it deemed of public interest.

“We could have told hundreds of stories over weeks or months,” Morris said.

“Instead, we chose to be selective and responsible in what we broadcast.”

Meanwhile, ASIO and other government agencies became alarmed that the documents which the ABC was not prepared to publish may fall into the wrong hands — they sent safes with combinations to the ABC’s office as negotiations began to get the documents back.

After a day of negotiation — the ABC’s main concern was the protection of the source — the documents were returned to the Commonwealth Government.

Ironically, the Cabinet Files publication has come as Federal Parliament is set to debate a new espionage law.



While the law purports to be targeting foreign agents operating in Australia, it will potentially criminalise some forms of investigative journalism as early as the research phase.

It would be a potential offence to “deal with” confidential information. Should a federal police officer or public servant want to speak to a journalist about possible corrupt behaviour, the very act of them speaking to a

journalist could make them, and the journalist, liable for up to 20 years’ jail.

Every media organisation I have worked for — *The Australian*, *The Sydney Morning Herald*, the Nine Network, *The Bulletin* and now the ABC — have treated confidential material carefully.

There are already strict laws of defamation, contempt and confidentiality which media organisations work within.

While the media has no shortage of critics — often justifiably — one aspect where the media in Australia does have a good record is in the handling of confidential documents.

The ABC displayed that this week — it published stories which helped the public better understand its political process and then returned the documents to ensure that any operational matters regarding Australia’s national security system would not be revealed.

The Australian public is now better informed than it was this time last week.

As the bushie had said that night last year over steak and sausages: “I think people have a right to know what’s going on in their country.”

**“Is whistleblowing worth prison or a life in exile?”  
Edward Snowden talks to Daniel Ellsberg**

**The two most famous whistleblowers in modern history discuss Steven Spielberg’s new film *The Post*, about Ellsberg’s leaking of the Pentagon Papers, the personal cost of what they did — and if they’d advise anybody to follow in their footsteps.**

Introduced by Ewen MacAskill  
*The Guardian*, 16 January 2018



DANIEL ELLSBERG, the US whistleblower celebrated in Steven Spiel-

berg’s new film *The Post*, was called “the most dangerous man in America” by the Nixon administration in the 70s. More than 40 years later, the man he helped inspire, Edward Snowden, was called “the terrible traitor” by Donald Trump, as he called for Snowden’s execution.

The *Guardian* has brought the two together — the most famous whistleblower of the 20th century and the most famous of the 21st so far — to discuss leaks, press freedom and other issues raised in Spielberg’s film.

Starring Meryl Streep and Tom Hanks, *The Post* deals with Ellsberg’s 1971 leak of the Pentagon Papers, which revealed presidents from Truman to Nixon lying about the Vietnam war. It deals, too, with the battle of the US media, primarily the *Washington Post* and the *New York Times*, to protect press freedom.

During a two-hour internet linkup between Ellsberg in Berkeley, California, Snowden in Moscow and the *Guardian* in London, the whistleblowers discussed the ethics, practicalities and agonised internal debate involved in whistleblowing and how *The Post* has a special resonance today in Trump’s America.

They are worried about Trump’s assault on press freedom and express fear that journalists could be indicted for the first time in US history. And they are alarmed by the prospect of a US nuclear strike against North Korea, urging a new generation of whistleblowers to come forward from the Pentagon or White House to stop it.



Matthew Rhys as Daniel Ellsberg in *The Post*

“It is madly reckless for this president to be doing what he is doing. Whether he is, in some clinical sense, crazy or not, what he is doing is crazy,” says Ellsberg. His book based on his experience as a defence analyst and nuclear war planner, *The Doomsday Machine*, was published in December.

Back when Snowden was debating whether to leak secret NSA documents, showing the scale of government mass surveillance, he found inspiration in a 2009 documentary, *The Most Dangerous Man in America: Daniel Ellsberg and the Pentagon Papers*. After Snowden handed over material to journalists in 2013, Ellsberg was among the first to express support and the two became friends, with Ellsberg visiting Snowden, who is living in exile in Moscow, in 2015.

They have a shared interest in press freedom. Ellsberg cofounded the US-based, not-for-profit Freedom of the Press Foundation, which helped organise the linkup. Snowden, who also serves on the foundation's board, devotes much of his time in Moscow to developing tools that help journalists protect their communications and sources.

Ewen MacAskill: How has whistleblowing changed in the 40-plus years between your leaks? One of the striking images from *The Post* is of leaked documents having to be laboriously photocopied, in contrast with today.

Daniel Ellsberg: Certainly, the ability to copy and release hundreds of thousands of files or documents, as Chelsea Manning did, or millions of pages, as Ed Snowden did, was quite impossible then. I was using the cutting-edge technology of the day, Xerox, to do what I did do, which was to copy 7,000 "top secret" pages. That could not have been done before Xerox.

So, in a sense, it is easier to get the truth out now than it was in my day. It took me months of effort — copying night after night. On the other hand, unless you are an expert like Ed or Chelsea, their ability to trace who has done the leak is probably greater than it used to be. You can't do it safely. As I understand it from Ed — you tell me, Ed, if I am wrong here — you felt with your counterespionage expertise you probably could have done it anonymously, but you chose not to do so. But others would be more likely to be caught.

Edward Snowden: First of all, a small correction for the record. Dan said I gave millions of documents to journalists. The figure is thousands. The point between the period of Dan's activities and mine is the expansion of

reach of a particular source who witnessed some wrongdoing. In Dan's case, what he had in his safe was the limitation of his reach. My reach was across a network rather than the confines of a safe ... And what this ultimately results in is a dynamic where a particular employee can plausibly — in fact, not just plausibly but demonstrably — have more access at their fingertips than the director of an office or a unit or a group or an agency — or perhaps even the president.



Edward Snowden in 2014. Photograph: Alan Rusbridger for the *Guardian*

EM: Another difference is Ed was able to operate solo whereas you, Dan, needed a team of volunteers.

DE: There was a kind of pickup crew, largely graduate students at Harvard, who helped find us places to stay and helped transport these papers. They were known as the Lavender Hill Mob, after the British movie in which a random bunch of petty criminals carry off a great heist. When my book *Secrets: A Memoir of Vietnam and the Pentagon Papers* came out in 2003, I wanted to tell their story, but they still did not want their names known because they thought the attorney general, John Ashcroft (who was in George W Bush's administration), might have imprisoned them. I was signing books and people were giving me little cards with the inscriptions they wanted me to write. A little card appeared: "To the Lavender Hill Mob." And there was someone I had not seen in 40 years.

EM: How do you feel about your portrayal in *The Post*?

DE: I am portrayed by a very handsome actor, Matthew Rhys. So my wife and I are quite satisfied with that. The movie is incredibly timely because we are dealing with a president who lies as he breathes, unapologetically. Also, a president who is contemptuous of the press. Nixon called the press the enemy. And Trump's people say it is

the opposition party, which is of course the enemy. When I was watching the film's premiere, I was thinking: this is a question of freedom of the press.

EM: How about you, Ed, your portrayal by Joseph Gordon-Levitt in Oliver Stone's 2016 movie? Did it have the impact you hoped for?

ES: I loved Joseph Gordon-Levitt. One of the funny things is they have trapped me in time over the course of my existence as the way I looked when I came forward, always wearing glasses, kind of nerdy. But the funny thing is most of my life, even today, I never wore glasses. I wear glasses in professional settings not because I love the look or whatever. For all the complexities of the film, which was basically slapped together in a hurry because events were developing around the world, they got the core of it, the most important part of it, right, which is what is happening with mass surveillance and why it matters.



Daniel Ellsberg (left) with his co-defendant, Anthony Russo, outside the federal court in 1973. Photograph: AP

When we talk about the impact that it produced in the public, I see responses to this day from people who had seen this but who have not seen *Citizenfour* [Laura Poitras's 2014 documentary about Snowden], which is the real documentary. And they just had not understood the issue. News reports had not reached them, but cinema did. They might not be the type to watch documentaries but they are the type to watch a drama. I think that is an incredible thing.

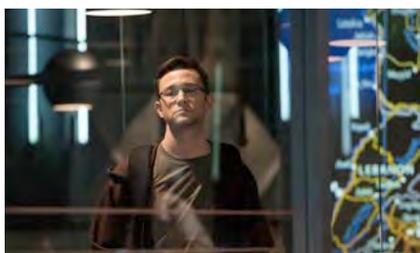
EM: What motivated you to take the final step in becoming a whistleblower?

DE: I would not have thought of doing what I did, which I knew would risk prison for life, without the public example of young Americans going to prison to make a strong statement that the Vietnam war was wrong and they

would not participate, even at the cost of their own freedom. Without them, there would have been no Pentagon Papers. Courage is contagious. I have heard you say, Ed, that *The Most Dangerous Man in America* was a factor in encouraging you to do what you did.

ES: That is absolutely true. While I was weighing up whether to come forward or not — and this was an agonising process because it was certainly life-changing — I watched that documentary. Dan's example, hearing the arguments from someone who has lived through this, it helps prepare someone to make that jump themselves.

I read, Dan, that you were described, maybe it was by Nixon, as self-righteous. But there is in whistleblowing a kind of righteousness that is required, even self-righteousness. Everything in your head, in society and everything we have been indoctrinated into believing is screaming: "Don't do this!" And yet there is some voice that builds over time that has to persuade a person that they do not just have the right to do this but a responsibility to do so; to make the move that will certainly burn their life to the ground. But, theoretically, the wellspring of hope that is the motivational force behind this is that it will redress some wrongdoing.



Joseph Gordon-Levitt in *Snowden*  
Photograph: Allstar

EM: Is the threat posed by Trump greater than that posed by Nixon?

DE: I believe this president will indict journalists, which has not happened yet in our country. We fought a revolution to avoid that. And we have not yet broken that first amendment, which protects press freedom, in our constitution. But this president is likely to do so. The climate has changed. And that was true under Obama, who prosecuted three times as many people for leaking as all previous

presidents put together — he prosecuted nine. I think Trump will build on that precedent. He will go further and do what Obama did not do and directly indict journalists.

EM: Is the WikiLeaks founder, Julian Assange, holed up in the Ecuadorian embassy in London and fearful of extradition to the US, one of those at risk?

ES: Julian's best defence, perhaps his only enduring defence, is that he is a publisher and has never even tried, as far as we are aware, to publish something untruthful. There are lots of criticisms, many of which are legitimate, to be said about his political views or his personal expressions or the way he put things or his agenda. But ultimately the truth speaks for itself.

DE: Assange is in danger. There are those who say that Julian does not have to fear extradition if he came out of the embassy and served a brief sentence, if anything at all, for violating the rules. I think that is absurd. I think Britain would ship him over here [to the US] in a minute and we would never see or hear from him again ... under Trump, he may well be the first journalist in this country to be indicted.

EM: What about whistleblowing to prevent a US attack on North Korea?

DE: I am sure there are thousands of people in the Pentagon and the White House who know an attack on North Korea would be disastrous because they have estimates and studies that show the outcome of a supposedly limited attack would be catastrophic in terms of hundreds of thousands of lives, millions of lives and what comes after.

ES: What would you say, Dan, to the next whistleblower, who is sitting in the Pentagon? They have seen the attack on North Korea planned, they have seen the consequences and it can be stopped.

DE: They have, of course, something I did not have then, which is they can go directly to the internet. And that is not something I would advise them to do. I think that, let's see, in your case you went to the *Guardian*, you did not put the stuff on the net directly as you could have done. I think you did the right thing ... If the *New York Times* does not do it, if the *Guardian* does not do it, you have the internet to go to.

EM: Was whistleblowing worth it?

DE: I once read a statement by Ed Snowden that there are things worth dying for. And I read the same thing by Manning, who said she was ready to go to prison or even face a death sentence for what she was doing. And I read those comments and I thought: that is what I felt. That is right. It is worth it. Is it worth someone's freedom or life to avert a war with North Korea? I would say unhesitatingly: "Yes, of course." Was it worth Ed Snowden spending his life in exile to do what he did? Was it worth it for Manning, spending seven and a half years in prison? Yes, I think so. And I think they think so. And I think they are right.

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## Inside the mind of a whistleblower

Aaron Jordan  
Whistleblowers Protection Blog  
29 March 2018



Will Kramer (pictured) knows what it means to be a whistleblower. As a former investigative staffer in the Senate, Kramer has ample experience working with whistleblowers. Later while serving as a health safety consultant, Kramer became one himself when he uncovered deeply disturbing conditions and improper handling of hazardous waste at several Greif Inc. plants. Kramer reported potential health, safety, environmental and securities violations to government regulators, members of Congress and the news media after the plants failed to address these issues. Now, as a law student, Kramer has written an important piece on the whistleblower mindset.

In the lead article for the *Wisconsin Lawyer*, Kramer examines what motivates whistleblowers. Read his article at <https://tinyurl.com/y7evjrps>

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## WBA conference and AGM

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This year's conference will be on Saturday 17 November and the annual general meeting on the 18th. The venue will be the same as in recent years: Uniting Church Ministry Convention Centre on Masons Drive, North Parramatta, Sydney. Make your flight bookings now to reduce costs.

Low-cost quality accommodation is available at the convention centre. Book directly with and pay the venue. Call 1300 138 125 or email [service@unitingvenues.org](mailto:service@unitingvenues.org)

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## Spot the whistleblowers

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Count the number of whistleblowers pictured in this issue of *The Whistle* and discuss your answer with friends. There's no prize for the right answer, in part because there is no right answer. Does a drawing of a whistleblower count? What about an actor portraying a whistleblower? Is a bushie who discovers secret government documents and contacts a journalist a whistleblower? (He isn't pictured, anyway, is he?) What do you call a journalist who breaks a story the government would like to silence? Does it really matter whether someone is labelled a whistleblower? Isn't the important thing whether they are acting in the public interest? Should whistleblowers acting in the public interest be valued more than others, who aren't whistleblowers, who also are acting in the public interest? Are there extra points for being an anonymous whistleblower?



## Whistleblowers Australia membership

Membership of WBA involves an annual fee of \$25, payable to Whistleblowers Australia. Membership includes an annual subscription to *The Whistle*, and members receive discounts to seminars, invitations to briefings/ discussion groups, plus input into policy and submissions.

To subscribe to *The Whistle* but not join WBA, the annual subscription fee is \$25.

The activities of Whistleblowers Australia depend entirely on voluntary work by members and supporters. We value your ideas, time, expertise and involvement. Whistleblowers Australia is funded almost entirely from membership fees, donations and bequests.

*Send memberships and subscriptions to Feliks Perera, National Treasurer, 1/5 Wayne Ave, Marcoola Qld 4564. Phone 07 5448 8218, [feliksfrommarcoola@gmail.com](mailto:feliksfrommarcoola@gmail.com)*