"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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BOOK REVIEW

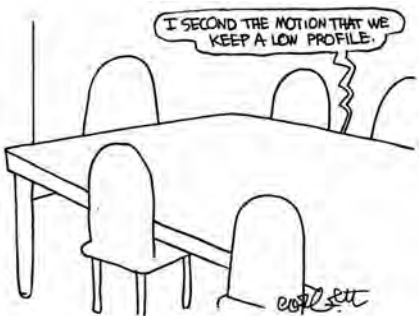
Learning from tempered radicals

A review of Debra Meyerson's book *Rocking the Boat: How to Effect Change Without Making Trouble*

Reviewed by Brian Martin

MY BOOK *The Whistleblower's Handbook* was published in 1999. In it, I discussed two main avenues to address problems. The first is trying to get someone in authority to take action, for example by informing the boss, using grievance procedures, contacting external agencies such as ombudsman's offices, and going to court. This road I call "official channels." The second main avenue I called "building support." It involves informing wider audiences, especially ones that may help to fix the problem.

When it came time to prepare a new edition of the book — this time titled *Whistleblowing: A Practical Guide,* published in 2013 — I added chapters on two other avenues. One is leaking, otherwise known as anonymous whistleblowing. This reduces the risks of reprisals and can enable staying in the job, collecting more information and continuing to leak.



The second new chapter I titled "Low-profile operations." I described it this way: "You can seek to address a problem by talking to people, introducing ideas, encouraging discussion and fostering awareness — and doing it inconspicuously." This approach reduces the risk of reprisals, keeps the focus on the issue (rather than on a whistleblower), enables staying on the job to continue fostering change, and can provide a model to other workers. However, low-profile operations may not be able to tackle deeply entrenched problems. Also, these sorts of operations often require well-developed interpersonal and communication skills. And they involve a time commitment on top of regular job tasks.

When I wrote the new chapter on low-profile operations, I wasn't aware of any research on this avenue for change. Recently, though, I discovered a major research project on this very topic. Its findings were published years earlier.

Enter Debra Meyerson

Debra Meyerson, a researcher at Stanford University, became interested in processes of organisational change pushed along by workers who wanted to make a difference while remaining in their jobs. She interviewed dozens of employees in three companies in the US, all of them sizeable white-collar businesses. Her main interest was in efforts to make organisations more inclusive, in particular to cater better for women, ethnic minorities and lesbians and gays. She also studied a number of cases of individual efforts in other locations.

Debra E. Meyerson

One interviewee, to whom she gives the name Peter Grant, was initially fairly low in the hierarchy but played a key role in hiring staff. He made an extra effort to recruit highly competent minority employees, which was important in this white-dominated company. He told applicants from minority groups that he expected them, if hired, to do what they could to hire more talented minority employees. Then, when these individuals were employed, he provided advice and support so they could survive and thrive. Over decades, his quiet efforts made a huge difference to hundreds of individuals, leading to a gradual increase in ethnic diversity in the organisation. Peter did not make a song and dance about what he was doing, but instead kept a relatively low profile concerning his efforts, and eventually he rose up within the organisation.

Joanie had responsibility for her company's use of fair-trade products but was met with resistance by managers in a key division. She took the opportunity of a company-wide restructure to move her unit into that division. By working closely with the managers, she changed their perceptions of priorities and they became supporters of her agenda.

Cathy, a black woman, had a good job in a company in a part of England that was heavily white. Driving a nice car, she was regularly pulled up by police for questioning, an obvious case of racial profiling. Rather than make a formal complaint or seek publicity, she consulted with a mentor, who wrote a letter to the police chief. It turned out the chief was sympathetic: he also wanted to stop the racial profiling by police under his command. Cathy and the chief worked together to bring about a change in police practice.

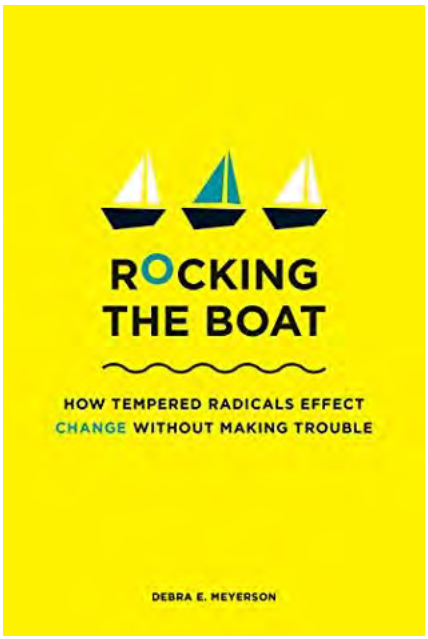
Meyerson interviewed employees who tried to make their organisation more family-friendly. Some bosses

would call last-minute meetings in evenings, making life difficult for workers with young children. By having a word with bosses, eventually it became standard to finish all meetings by 5.30pm.

In another instance, at one organisation most gay employees hid their sexuality from senior management. At a major function, gay men invited women to appear to be their partners. Tom's mentor advised him to do the same but, with his boss's support, Tom brought his male partner to the function, and all went well. This provided an example for other gay men.

Tempered radicals

These are among the many stories provided by Meyerson in her 2008 book *Rocking the Boat.* She calls individuals who seek to bring about organisational change, but in a cautious way, "tempered radicals." She describes five ways for these tempered radicals to make a difference. It's worth examining each of these ways and then seeing what whistleblowers might learn from them.



Meyerson adopts a perspective on psychology and behaviour in which every person has multiple "selves." According to this perspective, you behave differently in different circumstances, for example being a loving person at home but ruthlessly aggressive on the road. Many tempered radicals have personal ideals but, at the workplace, feel obliged to conform to expectations for appearance and behaviour.

Meyerson's first category for making a difference at work is quiet resistance that helps maintain a sense of your true, or non-work, self. This can be done by making links with like-minded others inside and outside the organisation, appearing to conform while acting on your beliefs, expressing your "self" through your clothes and personal style, and by acting outside the organisation. These methods of quiet resistance may not sound like much but they are important in maintaining aspects of your "self" that would otherwise be submerged or extinguished by workplace culture.

Meyerson's second category involves turning threats into opportunities. The threat might be pressure to conform, an offensive action such as abusive language or a stereotyped expectation such as that women will organise social functions. She says it's vital to step back to consider options, see these occasions as opportunities to bring about change, and to remember that silence is an option. Suppose the boss, in a meeting, says that the wife of the new CEO has great legs. Rather than challenging it immediately, in the heat of your emotion, it might be better to say something to the boss privately or to use humour such as "I think you should have said that James (the new CEO) has a great hairstyle." Sometimes small interventions can change the way people think and behave. If done carefully, the risk of causing offence is small.

Meyerson's third category is to build support by talking with potential allies and pursuing interactions to bring about solutions, while usually avoiding confrontation. Her case studies include ones mentioned already: getting production managers on side for supporting fair-trade inputs, raising the issue of putting business meetings on weekends, and countering racial profiling in police stops of vehicles. This may involve seeking advice and support from "third parties," who are individuals not directly involved in an issue. Third parties can help with preparation for action, offer legitimacy, provide personal support, mediate, reduce the anxiety of adversaries and offer helpful ways of thinking about issues. They can also help you avoid being sucked into the organisational way of seeing the world and avoid expressing anger that might be counterproductive.

Meyerson's fourth category is to seek small changes, wins that won't trigger resistance, and have them snowball, or just add up over time. One example is Peter Grant, described earlier, who recruited talented minority applicants and expected them to hire more minority applicants. There are several reasons for starting small. The changes can be achieved, and achieving them gives hope and confidence. Small changes reduce others' anxiety, and they can foster learning in the organisation while expressing the values of the tempered radical.

Meyerson's fifth and final category for making a difference at work is to be involved in collective action. In Australia, the obvious avenue is trade unions, but in the US private sector white-collar sector these are rare. Meyerson describes three routes into organising in the places she studied. Sometimes there was a threat or opportunity that enabled an individual to build support; sometimes an incident triggered wider support; and sometimes a group formed out of common interests, for example a group for gay employees, decided to take action.

Obstacles

Bringing about change in small ways while taking few risks sounds great, but it's not as easy as it sounds. Working for change on the inside over long periods can lead to anxiety and guilt. There is an ongoing tension involved in outwardly conforming while maintaining one's ideals but not acting on them in an overt way. Some tempered radicals, like Peter Grant, are accused of hypocrisy by outsiders who are una-

ware of the behind-the-scenes efforts they make over a long time.

Another obstacle is gradually adjusting to the organisation's agendas. As people rise in their careers, they can become more averse to taking risks because they have more at stake. They can wait for the ideal time to act — and keep waiting indefinitely. They can become adept at using insider language, but this can change the way they think.

Other obstacles are awareness that their actions may damage their reputations, and burnout from trying hard over a long period yet seeming to make little impact. If your boss is unsympathetic, making small changes is far more difficult. Personal relationships within your immediate work colleagues are crucially important.

What whistleblowers can learn

Meyerson only briefly mentions whistleblowers, saying that they face "obvious dilemmas." The typical issues raised by whistleblowers — corruption, abuse, hazards to the public — are different from the ones addressed by Meyerson's tempered radicals, which most commonly feature discrimination on the basis of gender, ethnicity and sexuality. Still, the methods used by tempered radicals are available to workers concerned about corruption. Or is something deeper involved?

In terms of what management says and what actually goes on, there's no fundamental difference. In the organisations that Meyerson studied, managers were officially committed to equality and, of course, to organisational effectiveness. Tempered radicals were acting in accordance with the stated values of the organisation. Nevertheless, they knew they had to be careful, because in practice things operated differently.

Similarly, management is always officially in favour of honesty, integrity, fairness, environmental responsibility and any other noble value you'd care to name. Whistleblowers are pointing out a possible violation of one or more of these values, and in this regard they are similar to tempered radicals.

Perhaps the difference in treatment of tempered radicals and whistleblowers is a matter of sampling. Whistleblowers whose stories end up in the media, or who come to Whistleblowers Australia, are mostly those who have suffered reprisals. We seldom hear about the ones who use the techniques of tempered radicals, carefully raising awareness about problems while keeping their jobs.

Perhaps there are more tempered radicals than we realise. In surveys carried out by the Whistling While They Work project led by AJ Brown, many employees reported that they had blown the whistle but not suffered reprisals. Could these employees have been tempered radicals who played the organisational game cautiously? Were they reporting on matters in a way that didn't threaten anyone? Were they dealing with personal grievances? We won't know until there are more studies like Meyerson's, delving into the stories of workers who try to make a change while not jeopardising their careers.

Perhaps there is another factor. All of Meyerson's tempered radicals seemed to know what they were up against. They recognised that, for example, coming out as lesbian or gay was potentially risky, or that they could pay a penalty by questioning the boss's racist or sexist comment. Women, ethnic minorities, and lesbians and gays are nearly always aware of patterns of discrimination because they encounter them routinely.

In contrast are workers who speak out but never set out to be whistleblowers. They thought they were just doing their jobs. They might be called "inadvertent whistleblowers." Unlike tempered radicals who carefully calibrate their actions to achieve change while minimising effects on their careers, inadvertent whistleblowers didn't realise there was any danger, or grossly underestimated the risks.

Another factor may be that the goals pursued by Meyerson's tempered radicals are in tune with wider social changes, which have seen, for example, greater acceptance of equal opportunity for women and ethnic minorities. Meyerson intentionally does not address organisational activists seeking what might be considered regressive changes, such as exclusion of women.

In contrast, there is not quite the same cultural shift in relation to challenging corruption. Despite rhetoric about honesty and integrity, it can be argued that the rise of market fundamentalism, with its endorsement of competitiveness and a priority on self-interest, as well as the gutting of regulatory restraints, has fostered a culture of greed. In this context, speaking out about corruption remains risky, if only because so many employees are implicated in it.

These considerations aside, it is still worthwhile examining what can be learned from tempered radicals. It is valuable to be acutely aware of which sorts of actions are safe and which are risky, and to have the courage to act in small ways to test the waters and make small improvements. There is much more to learn. We are still waiting for researchers to investigate how workers in practice have tackled corruption and hazards to the public in the style of tempered radicals.

Former Archbishop Philip Wilson receives award

THE WHISTLEBLOWERS ACTION GROUP Queensland selected former Archbishop of Adelaide Philip Wilson as its Whistleblower of the Year for 2018. The award citation carried the following commendation.

Former Archbishop of Adelaide Philip Wilson, for the disclosure to the court that the primary responsibility for enforcing the laws against child abuse was held by police and justice authorities, not by the clergy. Wilson's disclosure was made during his successful appeal of his conviction for allegedly failing to act against a paedophile priest. The announcement of the award has been withheld until after a final decision was made on the appeal by Cardinal Pell, and after the redacted portions of the Royal Commission report were made public.

Philip Wilson

Queensland Whistleblowers have, since 2018, withheld criticisms of the Royal Commission into Child Sexual Abuse, out of respect to those who benefitted from the focus placed by the Commission on the religious offenders. The line-up of bishops before the Commission was a moment of national significance that allowed those bishops to feel their national shame.

From the moment of the announcement of the Royal Commission, however, Queensland Whistleblowers wrote to the Prime Minister about our concerns as to whether the Royal Commission had the independence for dealing with child abuse in all areas of the community where predators gather to harm vulnerable children. In particular, any child abuse by officers from police agencies, justice bodies and government care agencies was as criminal in nature as the abuse of children by clergy, and thus merited the same intensity of investigation. So too was any involvement of those officers, in any covering-up of child abuse, deserving of equivalent examination.

Some victims of abuse, by police or justice or government officers, took their chances and went to the Royal Commission, but many stayed away. Some refused direct invitations from the Commission to give evidence about abuse and/or about cover-up of that abuse.

From a Queensland perspective, the Royal Commission needed to explain whether there existed any reasonable difference between the abuse of children in religious organisations versus abuse of children committed by government agencies. Serious abuse in government agencies within Queensland has been disclosed by former Premier Mike Ahern about the Osborne papers, by Kevin Lindeberg about the Heiner disclosures, and by the Fitzgerald Inquiry about the plan to frame a police whistleblower with child abuse charges.

Also, church laypersons, who were investigating religious abusers where the police were showing little interest, have made allegations that evidence provided to police was not used in prosecutions, causing them to lose further confidence in the police. Laypersons became suspicious of the efforts of police and justice authorities when those officers attempted to stop those laypersons from carrying out searches relating to victims of suspected child abusers. They also condemned the actions of senior police officers who frustrated the inquiries being made by honest police.

Since his release, Cardinal Pell has referred in interviews to the cooperation of police and bishops in moving offending priests. Why is Cardinal Pell not being interviewed about police cover-ups?

The Royal Commission appears to have created some confusion about who is responsible for prosecuting perpetrators of child abuse. It is absolutely certain that police and justice bodies have the primary responsibility for prosecuting paedophiles. The clergy are not responsible for prosecuting religious perpetrators. The Royal Commission has not vilified the police and justice officers who failed to act on the complaints that thousands of parents took to them, to the same extent that bishops were vilified by the Royal Commission for moving predators to unsuspecting parishes. What is worse, say, a bishop leaving an accused priest in charge of an orphanage, or a police sergeant who ignores the injuries, pleas and allegations of an escaped orphan, and returns the orphan to the orphanage in a police car? What is worse, the priest who maintains the secrecy of the confessional, or the judicial inquiry which does not inquire into criminal cover-up of abuse in a public institution because the terms of reference for the inquiry only go to abuse, not to cover-up of abuse?

The police commissioners and principals of some past inquiries and investigations were not given their day of shame, as were the bishops. If the Royal Commission found that it was not plausible for Cardinal Pell not to know about the abuse in the parishes at Ballarat, what did they find about the plausibility that the police commissioners did not know about the abuse occurring in the Ballarat community [Victoria], and in Maitland [NSW], and in Brisbane [Queensland].

Queensland Whistleblowers would ask, how did the law come to prosecute Archbishop Wilson, one of the few religious leaders who, laypersons claimed, did help them, and who pursued accused religious child abusers through the papal judiciary? How did the law pursue a cardinal with only one witness against him, when police and prosecutors were insisting that churchlay persons had to identify at least three victims willing to give evidence against a suspect before the police and prosecutors would act? How were non-religious persons, subject to allegations by multiple children, saved from prosecution because of prejudicial media coverage, but religious leaders, namely Cardinal Pell, were brought to trial with only one accuser after a national media campaign, led by a Four-Corners program and supported by widespread media condemnation?

Australia needs a new royal commission on child sexual abuse, with teachers, church lay persons, parents, and carers on the bench, and with police, justice and government authorities in the witness stand.

Media watch

Center for Whistleblower Rights & Rewards

TODAY, on 9 December 2020, UN International Anti-Corruption Day, we are pleased to launch the first organization that provides the full range of assistance and support to whistleblowers worldwide.

The Center for Whistleblower Rights & Rewards brings together an international team of attorneys and activists led by Whistleblowing International, leading whistleblower rights law firm Kohn, Kohn and Colapinto, and the National Whistleblower Center.

https://www.whistleblower-rewards.eu

The Center offers groundbreaking services to whistleblowers everywhere: regardless of where people live or work in the world, they can obtain legal representation, be eligible for anti-retaliation protection, and receive monetary compensation under US whistleblower laws.

People can communicate with the Center with a guarantee of complete confidentiality and under the protection of attorney-client privilege. Encrypted communication channels are available.

This is the first international organization that places whistleblowers at the center of its work. What a great way to celebrate International Anti-Corruption Day!

The cost of courage: Australia must do more to protect whistleblowers

Kieran Pender
Sydney Morning Herald
17 December 2020

AS WE REACH the end of 2020, four individuals — Bernard Collaery, Witness K, David McBride and Richard Boyle — are being prosecuted by our government. These whistleblowers spoke up in the public interest, and now face the very real prospect of jail time. If we want to live in a transparent, accountable democracy, that should trouble us all.

Collaery and Witness K revealed that Australia bugged Timor-Leste's cabinet, to help our government in ripping off an impoverished neighbour during tense oil and gas negotiations. McBride blew the whistle on the alleged actions of Australian special forces in Afghanistan — conduct characterised as potential war crimes by the Inspector-General. Boyle called out aggressive debt recovery practices by the Australian Taxation Office, which deliberately targeted vulnerable small businesses.

Bernard Collaery
Credit: Alex Ellinghausen

In each case, these whistleblowers raised their concerns internally first. Witness K articulated their misgivings with the Inspector-General for Intelligence and Security, in consultation with his Intelligence-approved lawyer, Collaery. McBride went to the police. Boyle lodged an internal disclosure. In each case, they were sidelined or ignored.

In desperation, they spoke up. But for these principled people, we might never have known about the misdeeds — potentially illegal, or, at the very least, improper — done in our name. It is only thanks to Collaery, Witness K, McBride and Boyle that we can demand corrective action and take steps to ensure they are never repeated.

We should be praising these whistleblowers. Instead, the Morrison government is prosecuting them. Orwellian? Kafkaesque? Take your pick.

Whether or not Collaery, McBride or Boyle succeed in their defences (Witness K has indicated a willingness to enter a plea of guilty to a single charge of breaching the Intelligence Services Act, subject to a plea bargain), the chilling effect of the prosecutions is severe. What potential whistleblower — having seen the reality faced by the current quartet — would accept these risks and speak up? Staring down the barrel of psychological trauma, professional ruin and financial oblivion, how many prospective truth-tellers will stay silent?

What wrongdoing might be occurring right now that Australians will never know about, because those who witnessed it remain mute? The cost of courage has become too high a price to pay.

It did not have to be like this. In 2013, the Labor government introduced protections for public servant whistleblowers. The Public Interest Disclosure (PID) Act provided a comprehensive regime for the disclosure and investigation of wrongdoing and protections for those who speak up. But while on paper the law was a step in the right direction, it has proven ineffective in practice — no more than a cardboard shield.

In 2016, an independent review by Philip Moss found that "the experience of whistleblowers under the PID Act is not a happy one". Last year, a Federal Court judge lambasted the law as "technical, obtuse and intractable" and "largely impenetrable".

On Wednesday, Attorney-General Christian Porter announced that the government was accepting, in part or in whole, 30 of the 33 recommendations made by Moss. This is welcome news, but it is long overdue. Porter and his colleagues have sat on this reform for four and a half years. In the meantime, homes have been raided, charges laid against whistleblowers and secretive trials commenced.

The Attorney-General must reform the PID Act as a matter of urgency. In the government's official response, it flagged that it intends to go further than the Moss review. This is welcome,

although the devil will be in the detail — detail which, for now, remains absent. If Porter is serious about promoting transparency and probity within our democracy, he should commit to legislating stronger protections for government whistleblowers in early 2021. Wednesday's announcement is a positive step, yet until these changes become law, whistleblowers will continue to suffer.

David McBride
Credit: Rod McGuirk

Recent amendments to the laws protecting Australia's private sector whistleblowers only underscore Porter's inaction on public sector reform. Currently, those exposing corporate corruption are better protected than those exposing government misfeasance. That cannot be right. Public servants who speak up deserve protections equal to their private sector counterparts.

Meanwhile, the government has doubled-down on secrecy laws to penalise unauthorised disclosure of official information. It terminates the employment of public servants who dare criticise it online and cuts funding to accountability agencies that were established to keep the government in check. Our freedom of information regime is in tatters. Collectively, these measures guarantee a culture of silence within our public service and make external oversight even harder.

Australia was once a world leader in the field of whistleblower protections. When the first whistleblowing laws were introduced in this country, in 1993, the United States was the only jurisdiction with comparable protections. But as nations across the globe have found innovative ways to protect and empower whistleblowers, Australia has lagged behind. We have failed to shake off the words of a former police commissioner, who once observed that "nobody in Australia much likes whistleblowers".

Yet any one of us could become a whistleblower. I have met dozens of individuals who have spoken up against wrongdoing. Almost unanimously, they say: "I did not intend to become a whistleblower."

Many shun the label entirely. They are simply people who did what they believed was right — people who saw cruelty, corruption or abuse of power, and felt morally compelled to do something about it. In their shoes, would we not all hope for the courage to do the same?

Whistleblowers perform a vital democratic function in Australia. They are the canary in the coalmine that is Australian democracy. We must hear their call, not lock them up. The government's recently-announced commitment to reform the PID Act is welcome, but actions speak louder than words.

Kieran Pender is a senior lawyer with the Human Rights Law Centre, and leads the centre's work on whistleblower protections.

If moral courage matters, this whistleblower needs defending

Nick Xenophon
The Age, 18 November 2020

DEAR GENERAL CAMPBELL, we've met a few times. At briefings at Parliament House when you ran Operation Sovereign Borders, and in the robust forum of Senate estimates. I was always impressed by your palpable decency, competence and forthright manner.

So, I hope you won't take issue with me writing this open letter to you about our firm's client, David McBride, a proud veteran, a former army major who now faces life imprisonment for, basically, telling the truth about what was happening in Afghanistan.

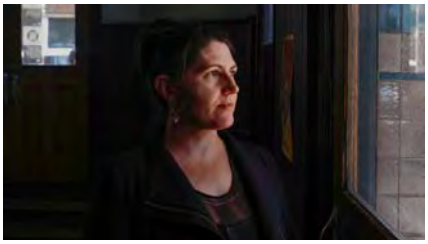
Angus Campbell
Credit: Alex Ellinghausen

Just a few days ago, you were handed the Brereton report — four years in the making — about alleged war crimes by Australian troops in Afghanistan.

You said, on receiving the report, you would "speak out" about Justice Brereton's key findings once you had "read and reflected" on the report. Not only do we now know you will do so this Thursday, but the PM has warned Australians to brace themselves over the shattering revelations in that report.

Given our client was warning — years before — of the very culture of cover-ups that the Brereton inquiry investigated, I urge you to read and reflect on what is happening to McBride before you speak out, because the two are inextricably linked.

Major David McBride was an army lawyer, with an exemplary record who served in Afghanistan on two tours of duty. McBride became deeply concerned about battlefield behaviours that were being ignored or not reported. He was particularly concerned by the culture of impunity and cover-up that was being set by defence leadership.



Samantha Crompvoets' report into SAS abuses led to Australia's biggest war crimes probe. Credit: Dean Sewell

As both an army officer, sworn to uphold the integrity of the Defence Force, and a practising lawyer, McBride had a duty to report what he observed. He did so by lodging complaints up the chain of command and through every possible avenue of internal disclosure. He was ignored.

As a last resort, because the information demanded disclosure, he finally "blew the whistle" by going to the media. The ABC published the "Afghan Files" in July 2017, setting out shocking details of war crimes and cover-ups — from material that McBride provided. The "Afghan Files" were a breakthrough revelation for Australians, including many of its parliamentarians (including me at the time), but for McBride it was the beginning of his torment. He was arrested soon after and now faces a

possible life sentence at his trial next year.

The charges against ABC journalist Dan Oakes, who received the documents, were recently (and quite rightly) dropped by the Commonwealth Director of Public Prosecutions. But without the source, the journalist had no story and the public would still be none the wiser.

So, what's this got to do with you? Both nothing and everything. Nothing, as there is no suggestion of any culpability on your part; on the contrary, it was you, as Chief of the Army in 2015, who commissioned the report by Samantha Crompvoets that was seen as a catalyst for the Brereton inquiry. Crompvoets' cataloguing of the "blood lust" and "cover-ups of unlawful killing" only saw the light of day on the pages of this newspaper last month.

But in a sense, the continuing prosecution of McBride has everything to do with you. McBride was arrested by the AFP in 2017 at the instigation of Defence. Now in 2020, the Commander of Special Operations, Major-General Adam Findlay, acknowledges that "poor moral leadership" was to blame for atrocities that occurred in Afghanistan. What a difference three years has made. But nothing has changed for McBride.

Findlay praises the "moral courage" of whistleblowers and I suspect there may be more such comments in the wake of the Brereton report. Yet the parallel treatment of McBride remains a chilling warning to every serving Australian Defence Force member to turn a blind eye, to shut up if they know what is good for them.

Nick Xenophon

It was whistleblowers like McBride and a handful of others who made the Brereton report possible by refusing to be intimidated into silence. In my view, they have redeemed the reputation of our nation. They do not deserve jail cells. I respectfully ask you, indeed I implore you, when speaking out on the Brereton report this Thursday, that you also speak out for McBride: a man who acted at great personal sacrifice to uphold the honour and integrity of the Defence Force you lead.

Nick Xenophon is a partner in law firm Xenophon Davis, which is acting for David McBride. As a senator (2008 to 2017) he instigated a Senate inquiry into whistleblower protections.

Hounding whistleblower major is now hypocritical

Letters to the editor
Sydney Morning Herald
23 November 2020

The government has condemned the alleged war crimes by some soldiers of the ADF ("Force of fear", November 21–22). The prime minister has expressed deep sorrow to the people of Afghanistan. Yet the government is proceeding with the prosecution of whistleblower David McBride ("Moral courage needs defending," November 18), who first brought these alleged atrocities to light. The government should end this hypocrisy and drop these charges. This trial is not only wrong but a waste of taxpayers' money. **Leo Sorbello, West Ryde**

We should consider the possible outcome for whistleblower Major David McBride as a result of his attempting to report to the relevant authorities shocking behaviour and cover-up for some actions by some of our defence forces in Afghanistan. One certain outcome is more months of stress — he was originally arrested in 2017 and his trial is to start next year — and he faces the possibility of a life sentence. **Bridget Wilcken, Mosman**

"The only thing necessary for the triumph of evil is for good men to do nothing" (a saying usually attributed to Edmund Burke). Major David McBride was conscious of that when he blew the whistle on atrocities allegedly committed by Australian elite soldiers in Afghanistan. He has helped to ensure the evil did not triumph. We as a society committed to human decency owe a debt of gratitude to good men such as David McBride. It's a crying shame that instead he is being persecuted. **Rajend Naidu, Glenfield**

The government has now publicly expressed sorrow about the misconduct of our troops in Afghanistan. Yet for years this same government has done everything possible to suppress any information about these events through its raid on the ABC, its intimidation of journalists and the ongoing threat to prosecute primary whistleblower David McBride. I just wonder whether we would, without McBride and these journalists, have ever heard about these events? **John Slidziunas, Woonona**

The fact that legal action remains pending against David McBride is a further outrage, and it must be withdrawn immediately. Our government should hang its head in shame in regard to his treatment and that of a fellow whistleblower and of the ABC. **Adrian Eisler, Eleebana**

Despite all evidence of horrendous atrocities in the Afghanistan war, so far only one person is facing criminal charges. That person is David McBride, the man who risked so much to bring those dark secrets into the light. Without him, the Brereton inquiry would not have happened. He deserves our thanks and support. Dropping the charges would be a start. **Tony Judge, Woolgoolga**

No (Letters, November 21-22), soldiers are trained to fight the enemy, not hate them. No again, the enquiry is not about castigating soldiers doing their job. This enquiry is about soldiers stepping over the line and cold-blooded killing. All (most) soldiers know the rules and follow them. **Mike Berriman (Vietnam vet), Tanilba Bay**

blueprint for FREE SPEECH

Bernard Collaery

2020 Blueprint International Whistleblowing Prize

THIS IS A STORY about spies, international espionage, betrayal and billions of dollars' worth of contested natural resources lying under the ocean floor.

In this story, one of the richest countries in the Asia-Pacific region spied on and betrayed one of the very poorest. The beneficiary of the Australian state-sanctioned spying operation was an oil and gas company.

The story traverses five countries — The Netherlands, Indonesia, Australia, the UK, and one of the world's newest nations, Timor-Leste, formerly known as East Timor.

The history of bravery and betrayal

The story begins with Timor Leste's transition from Indonesian rule into an independent nation in 2002. This was a violent transition, in which "more than 150,000 people, a quarter of the population, were murdered or deliberately starved to death between 1974 and 1999, when the territory was under Indonesian rule."

Australia and Timor share a long history together, with Timor having proved itself as a staunch ally to its bigger, wealthier neighbour. In the First World War, a company of Allied soldiers, including Australian, Dutch and British fighters, were trapped in Timor, and came under heavy fire after disrupting the Japanese military presence. The Allies retreated into the mountains and were hidden and protected by the Timorese, at a terrible cost to themselves. The East Timorese suffered 40,000 deaths due to aerial bombings and the destruction of villages that the Japanese forces suspected of sheltering Australian troops.

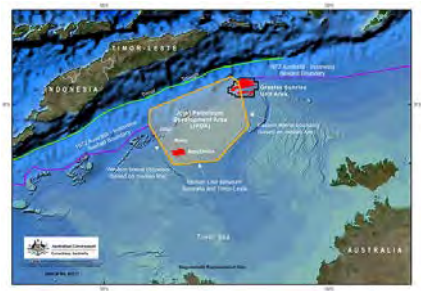
Timor is one of the poorest nations in South-East Asia, ranking 131st out of 182 countries on the UN's 2018 Human Development Index.

By comparison Timor's neighbour Australia is wealthy. The flight from from Dili, the capital of Timor, to Darwin, Australia's northern-most capital city, 722km away, only takes about an hour, and yet it is a world away in terms of child malnutrition and poverty.

So when Timor gained its independence, it was not surprising that Australia offered to send international aid support to the new nation.

But it also sent spies.

Timor only has one major source of wealth: natural resources that include valuable oil and gas fields. These are under the ocean bed in the Timor Sea that divides Australia and Timor. In order to develop those resources, the two allies were obliged to share the revenue. How the two countries would divide the undersea resources was the subject of treaty negotiations on their maritime boundaries.



The Australian Government sought to gain an unfair advantage in these negotiations by sending Australian Secret Intelligence Service (ASIS) agents to bug the offices of the Timorese prime minister and his cabinet. The Australians would have heard the Timorese negotiating positions. One of the key protagonists in this story is Witness K, an unnamed ASIS officer who was asked to lead the bugging operation.

The spying operation was technologically sophisticated:

The electronic bugs placed inside the Palácio do Governo "were turned on and off by a covert agent inside the building. They then beamed the recording by microwave signal to a line-of-sight covert listening base set up inside the Central Maritime Hotel … The digital recordings were then allegedly couriered across town to the Australian embassy, and sent to Canberra for analysis."

"The 127-room Central Maritime Hotel was a converted Russian hospital ship that was rebuilt in Finland, used as a hotel in Myanmar and then towed to Dili because there were no hotels or restaurants of suitable standard for international visitors. It was conveniently moored opposite the waterfront white-stuccoed Palácio do Governo."

The Timorese didn't know their private cabinet discussions about the treaty had been secretly breached. The Australian Government's cover story for the bugging was an aid program to renovate the Timor government offices.

In 2006, foreign ministers Alexander Downer of Australia and Jose Ramos-Horta of Timor signed an agreement to divide up the resources under the Timor Sea. Australia was the clear winner in those negotiations, gaining a significant financial advantage compared to what would have been the standard position under international law.

A major beneficiary of the new bilateral agreement was a resources company, Woodside Petroleum. In 2008, Foreign Secretary Downer left politics to take up a lucrative contract with Woodside. The then Secretary of the Department of Foreign Affairs and Trade had already resigned and joined the board of Woodside.

The bugging operation did not sit well with some inside ASIS, Australia's overseas intelligence agency. The situation was described by Australian Senator Rex Patrick in a 2018 speech in Parliament:

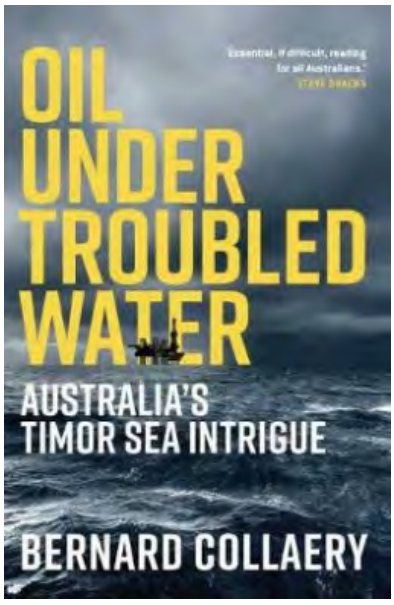
> Aware of Mr Downer's consultancy work for Woodside, Witness K complained to the Inspector-General of Intelligence and Security about the East Timor operation. ASIS took steps to effectively terminate his employment—an outcome that is not unusual for whistleblowers in this country. In response, Witness K obtained permission from the IGIS to speak to an ASIS-approved lawyer, Bernard Collaery, a former ACT Attorney-General. After 2½ years of research, Mr Collaery determined that the espionage operation in East Timor was unlawful and may also have been an offence under section 334 of the Criminal Code of the ACT.

Going to the specifics, the case rested on the fact that the then director of ASIS, David Irvine, ordered Witness K, the head of all technical operations for ASIS, to place covert listening

devices in the East Timorese government buildings. Those instructions enlivened the section 334 offence in that it constituted a conspiracy to defraud Australia's joint venture partner, East Timor, by gaining advantage through improper methods when the Commonwealth was under a legal obligation to conduct good-faith negotiations.

In 2012, Timor's leadership became aware of the spying, and started proceedings in the Permanent Court of Arbitration in The Hague. Timor intended to argue that Australia had acted in bad faith by spying during the negotiations, which would void the Timor Sea agreement.

Witness K was to be the star witness, supported by his lawyer, Bernard Collaery. Collaery had flown to The Netherlands early to prepare for the hearing in December 2013. The Hague had a special significance to him because his father, a WWII fighter pilot had been shot down and killed on an Allied mission near The Hague. Collaery had located the spot the plane went down in waters just offshore.



While Collaery was abroad, Australia's domestic spy agency ASIO and the federal police simultaneously raided Collaery's home and barristers' chambers, as well as the home of Witness K. They took K's passport, so he would not be able to travel anywhere. The raids had been organised by David Irvine, who had then become head of ASIO.

Collaery would not go quietly. Witness K would not be able to identify himself, but Collaery provided a voice to call out the campaign of persecution and harassment being conducted against them both. He fearlessly spoke up about the raid.

If the raid on the former intelligence officer and his lawyer was meant to dampen down Timor's agitation for a revised treaty, it failed.

By 2018, the Australian Government had been shamed into renegotiating the treaty. This time around, Timor won a much fairer deal with an appropriately larger share of the sea bed and its resources.

In this way, the people of Timor Leste have finally won rightful ownership over their own natural resources. The increased revenue will have a significant impact in a country where the population suffers in so much poverty.

The story is not however over for Witness K and Bernard Collaery. In 2018, four months after the signing of the new treaty, and four and a half years after the raids, the Australian Government chose to charge Witness K and his lawyer, Bernard Collaery.

Each faces criminal charges for conspiring to share information protected by Section 39 of the Intelligence Services Act, which prohibits the unauthorised communication of official information.

Witness K has indicated he will plead guilty to breaching the Intelligence Services Act. Bernard Collaery is continuing to fight in the ACT (Australian Capital Territory) Supreme Court in Canberra.

Proceedings have been opaque and expensive. The Australian Government has already spent some $2 million prosecuting Collaery and Witness K, despite the proceedings being still only in a pre-trial stage. That Collaery faces four charges only came to the public after nine months of hearings and seven judgments.

The Australian Government has insisted that Collaery's court proceedings be held in secret. While some secrecy, such as protecting Witness K's identity, is important, there is a great deal about this case that can and should be heard in open court.

The Law Council of Australia, the nation's peak legal body, has thrown its support behind Collaery and criticised the government's use of secret courts.

The president of the Council said that the use of the 2004 National Security Information Act, which was enacted during the war on terror in response to terrorist threats, to close the court room, offends "the principles of open justice." Justice being served openly is a "basic rule of the common law", she said.

Open courts are a cornerstone of Australia's legal system. One of the major risks with secret courts is that a government will try to prosecute people for revealing its crimes, and those crimes will never come to light.

In Timor-Leste, according to Kim McGrath's book, *Crossing the Line: Australia's Secret History in the Timor Sea,* "the streets of Dili are graffitied with kangaroos carrying away buckets of oil."

Congratulations to Bernard Collaery — winner of the 2020 Blueprint International Whistleblowing Prize.

Bird's eye view: the markers of government-sanctioned corruption

Ken Carroll

Pearls and Irritations
22 November 2020

I JOINED the Australian Public Service (APS) with a typical expectation of working to serve the public. The brochure looked inviting: people working happily together, and a chance to progress in an organisation that valued such common-sense ideals as working in a supportive, accountable, a-political organisation with high ethical standards. Evidently, I was wrong.

Serious offences committed yet covered up by management; just another day at the office.

I was in disbelief that management just did not seem to care. It took me a few years to understand why. Having been through the complaints and investigations "system" in several federal government agencies, I am unfortunately more than qualified to assess the system's effectiveness.

When a federal employee wants to report a crime allegedly committed by another federal employee, the complaint must be reported to the commonwealth agency in the first instance. This is public knowledge. This is Australian Federal Police (AFP) policy.

The obvious issue is that the people to whom you report the offences could very well be the ones who have either committed the alleged crimes or want to cover up the allegations. If the agency finds that no offences have occurred, the AFP will not investigate.

This is where the real crime against every single Australian begins, because their hard-earned tax dollars are spent to support a system that covers up alleged crimes committed by high-level bureaucrats and politicians — to protect themselves and the reputation of the government.

The average Aussie would be gobsmacked and enraged by this, as I have been. The cover-up by government departments, organisations and the people who are supposed to ensure offences are properly investigated is indicative of a system engineered to appear to be working efficiently when, in fact, it allows bureaucrats and politicians alike to behave outside the confines of the law, without consequence. This is the real issue that all Australians must know about, because you're paying for it.

Moreover, this system is a slap in the face to all the good and hard-working APS employees, who are no doubt in the majority. It is a slap in the face to all Australians who want to believe there is an efficient system that investigates unethical and criminal conduct committed by those in high office, including politicians.

We have been told for years that such an effective, efficient system exists, but the opposite is the case. The victims are not only taxpayers but, in particular, the people who do the right thing by reporting misbehaviour.

But the greatest victims of all are the brave men and women who fought for our freedoms in various theatres of war. They gave up everything for us and still do so, to fight for the ideal of democracy. There is no democracy when bureaucrats and politicians have engineered a system that allows them to evade the law.

There are several ways to gauge whether government corruption is sanctioned by the government itself.

First, the manner in which whistleblowers are treated. Bullying and harassment within the APS is publicly acknowledged. However, whistleblowers endure endless reprisals for speaking up for the good of all. This is obviously a cultural norm sanctioned by top management to discredit the allegations of the whistleblower, to punish them for their pesky do-goodedness. The added benefit is that it warns off other likely "do-gooders."

It is a testament to those in power the extent to which then can manipulate people into thinking and behaving in a degrading manner. It is also an abysmal attitude that harms the mental health of all APS workers and those who help people with mental health issues in Australia.

A second indicator of government sanctioning corruption is the laws enacted in relation to whistleblowers. I cannot think of anything more important to national security than to ensure a thorough independent and professional investigation of any possible systemic corruption.

If corruption is allowed to flourish at top levels of government and politics, this is a matter of grave national security. So any country that enacts laws, or uses existing laws, to silence whistleblowers is extremely telling in terms of their attitude about corruption and, no doubt, indicative of the level of systemic corruption that exists in that country. Otherwise, why create laws and use existing laws to silence whistleblowers with the threat of imprisonment?

Australia is at a crossroads in terms of forging a moral pathway to ensure open, transparent and ethical governance, now and in the future. In terms of a robust, well-resourced national independent commission against corruption with actual teeth, we are all paying dearly for its absence and have been for quite some time. The return on investment, financially and otherwise, to all citizens of an independent federal commission against corruption with far-reaching powers would far outweigh the cost of corruption itself. The reports of political and commonwealth rorts over the past 12 months alone is sufficient evidence of the need for a commission.

This is an opportunity to lay the foundations of an open and accountable system of governance. We deserve it, our forefathers deserve it and our children deserve it.

Ken Carroll was a Queensland Police Officer within the Queensland Police Service from 1994 to 2012. He then started work as a provisionally registered psychologist within Queensland Corrections and then joined the Australian Public Service in 2013. He holds a psychology degree with honours and a Master of Business Administration degree and has worked in both the Commonwealth Department of Human Services and the Department of Health.

Sovereignty eroded: Wiki cables show both Labor and Coalition culpable in Assange persecution

Andrew Fowler
Michael West Media
3 December 2020 |

THE AUSTRALIAN GOVERNMENT'S treatment of Julian Assange has revealed more than a library of leaked documents ever could about how power is exercised in the relationship with the United States, writes **Andrew Fowler**.

Justice Brereton has just handed down his report into war crimes allegedly committed in Afghanistan by Australia's SAS soldiers. Crimes that may not have seen the light of day without the work of journalists.

Prime Minister Scott Morrison says the report is disturbing and distressing; that the war crime allegations must be dealt with by the justice system; that any prosecutions must adhere to the presumption of innocence.

Morrison fails to recognise the role of journalists in revealing the killings, and instead warns against "trial by media". And the journalist who first revealed evidence of war crimes in Afghanistan, Julian Assange, should, according to Morrison, be left to "face the music." Assange is fighting what is seen as a largely political US extradition request that could see him jailed for 175 years yet Australia has done little to help.

A country that will not fight for its citizens when facing a hugely questionable prosecution erodes its own sovereign rights.

The US holds all the cards

Through Assange and Wikileaks we have learnt much about the relationship between the US and Australia and its security agreement, the ANZUS treaty. But it is the Australian government's treatment of Assange that reveals more than a library of leaked documents could ever do about how power is exercised in this relationship.

The lies were obvious from the beginning. In 2010, when Assange, working with the *Guardian* newspaper in the UK, began publishing reports from the Cablegate cache of leaked documents, the Iraq War Logs, and the Afghan War Diary. The US government immediately complained that the revelations put lives at risk.

But that was all part of a ploy:

> A congressional official … said the administration felt compelled to say publicly that the revelations had seriously damaged American interests to bolster legal efforts to shut down the WikiLeaks website and bring charges against the leakers.

In truth, internal US government reviews had determined that the leaks had caused only "limited damage to US interests abroad."

Yet, in lock-step with the US administration, the then Australian prime minister Julia Gillard echoed the White House's public statements by declaring that Assange had broken the law.

> I absolutely condemn the placement of this information on the WikiLeaks website. It is a grossly irresponsible thing to do — and an illegal thing to do.

In fact it was nothing of the sort. A Federal Police investigation found that Assange had broken no laws. Yet Gillard did not retract her allegation. The Government went further, giving several organisations, including the Australian Security Intelligence Organisation (ASIO), greater powers and widened the area of activities deemed illegal to include strategic and diplomatic relations.

The then attorney-general, Senator Robert McClelland, weighed in saying that Australian authorities would do all they could to help the US investigation into WikiLeaks. Without revealing what advice he was basing his decision on, McClelland even threatened to revoke Assange's Australian passport.

A voice in the wilderness

The only government voice providing any support was foreign minister Kevin Rudd, who had taken Gillard and McClelland to task when they had attacked Assange's activities. Rudd declared the need to recognise the principle that Assange was "innocent before proven guilty." He also told the attorney-general he did not have the power to revoke Assange's passport.

It is possible Gillard thought being pro-American would play well with the public. It didn't. Assange's biggest support base is in Australia, where opinion polls said that 60% of the people agreed with the work he had done. More surprising was the support he received from news outlets.

In an unprecedented move, representatives from all the major outlets bar *The Australian* signed a letter criticising Gillard:

> To aggressively attempt to shut WikiLeaks down, to threaten to prosecute those who publish official leaks, and to pressure companies to cease doing commercial business with WikiLeaks, is a serious threat to democracy, which relies on a free and fearless press.

When GetUp! launched a campaign, thousands filled the streets in Sydney and Melbourne. Assange told the crowd by video: "It is interesting how some politicians single out my staff and myself for attack while saying nothing about the slaughter of thousands by the US military or other dictatorships. It is cowardly to bully a small media organisation, but that is what is happening."

A price worth paying?

Clearly the government thought it was a price worth paying for what it believed was its "special" relationship with Washington. In the final days of a wet Australian spring in 2011, then US president Barack Obama landed in Canberra to address the Australian Parliament.

It was the 60th anniversary of the founding document of the ANZUS treaty. Obama's presence produced what were described as scenes of nauseating adoration from politicians of both the major parties. When he addressed parliament, Obama spoke eloquently of "the rule of law, transparent institutions and equal administration of justice."

However, it was becoming increasingly obvious that when it came to Assange the US and Australian governments were playing by other rules. Assange was receiving only minimum consular support from the Australian High Commission in London.

His political support came almost exclusively from the Greens. Scott Ludlam told the Senate that Assange was recognised as a journalist by the High Court in the UK. WikiLeaks was "a publisher," and Assange had "broken no law, just as the people who put his material on the front page of *The Age* and the *New York Times* have broken no law."

In the US public calls were made for Assange's execution as an enemy combatant. Joe Biden called him a "high-tech terrorist." In any other case involving an Australian citizen, it's hard to believe there wouldn't have been an outcry from Australia's leaders. Drug runners had received more sympathetic treatment. There was little defence of Assange and he was fast becoming a man without a country.

Score to settle

Gillard's role has often been reported through the prism of Australia's grovelling support of America, fearful of confronting its powerful ally.

But she also had a personal issue with Assange, and a score to settle: the release of the Cablegate documents, which later so embarrassed her and unmasked the ALP plotters who had planned the coup against then prime minister Rudd.

One leaked US cable reported:

> Don Farrell, the right-wing union powerbroker from South Australia, told us Gillard is "campaigning for the leadership" and at this point is the front-runner to succeed Rudd.

The US Embassy in Canberra also reported that "the PM's brother Greg [Rudd] told us … that Rudd wants to ensure that there are viable alternatives to Gillard within the Labor Party to forestall a challenge." The cable added that "protected" source Senator Mark Arbib (another Labor powerbroker) "once told us a similar story."

Even though the cables were published well after Gillard made her attack on Assange, the US had provided well in advance full knowledge of the contents, because the US very early on had determined which cables Chelsea Manning had leaked.

Federal government's hostility

Yet it was more than Gillard and McClelland's behaviour that highlighted the federal government's hostile attitude towards Assange and WikiLeaks.

The government repeatedly delayed responding to Freedom of Information (FoI) requests, and the then foreign minister Bob Carr skirted the question when asked whether Assange was a journalist, undercutting his primary defence.

Carr also referred to the amorality of WikiLeaks' revelations but did not elaborate. It was a strange comment from a foreign minister whose job it is to represent Australian citizens in trouble overseas, although he has since spoken out against Assange's extradition to the US.

The limited information released under the FoI Act revealed that instead of seeking assurances that Assange would be treated fairly if he were ever extradited to the US, the Australian Embassy in Washington was more focused on the possible political fallout in Canberra. The embassy was in fact seeking advance warning, a "heads up," of when any action against Assange or WikiLeaks may take place.

For Assange, the final evidence that he had been abandoned came when Nicola Roxon, McClelland's replacement as attorney general, wrote to Assange's lawyers just before he sought asylum in London's Ecuadorean Embassy, saying:

> Australia would not expect to be a party to any extradition discussions that may take place between the United States and the United Kingdom or the United States and Sweden, as extradition is a matter of bilateral law enforcement co-operation.

In other words, the Australian government had abrogated its responsibility to defend one of its citizens.

What is more difficult to understand is the indifference to Assange's plight often shown by other journalists, including from *The Age*, The *Sydney Morning Herald, The Guardian* and the ABC, who are just as vulnerable to extradition to the US for what they have published from the WikiLeaks documents. Many remain silent or give only half-hearted support.

Others have argued a line straight out of the US State Department that Assange is not a journalist at all, thus stripping him of his best defence — and putting other journalists at risk.

It would be comforting to think they are simply misguided, but the military intelligence establishment has always found willing recruits in the media, and now is almost certainly no different.

This edited extract is reproduced from *A Secret Australia: Revealed by the WikiLeaks Exposés,* edited by Felicity Ruby and Peter Cronau, Monash University Publishing, December 2020.

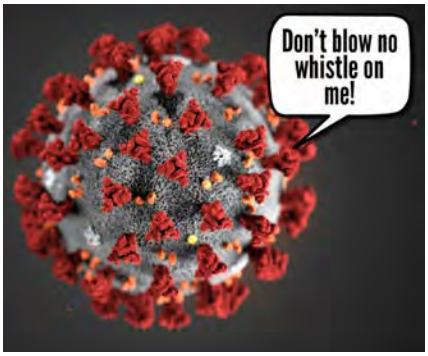
Andrew Fowler is an award-winning investigative journalist and a former reporter for the ABC's Foreign Correspondent and Four Corners programs. His updated book on WikiLeaks, *The Most Dangerous Man in The World: Julian Assange and WikiLeaks' Fight for Freedom,* was published in July 2020 by Melbourne University Press.

One in five Covid whistleblowers sacked, research reveals

Jonathan Owen
People Management, 30 October 2020

ONE IN FIVE employees who have gone to their bosses with concerns over furlough fraud and breaches of Covid-19 safety rules have been sacked as a result, a report has found.

The British whistleblowing charity Protect also found two in five staff who made disclosures were simply ignored, in what it said was a "systematic response to whistleblowing."



The charity analysed 638 cases related to coronavirus raised between 23 March and 30 September — including complaints about furlough fraud (62 per cent), risk to public safety, including a lack of social distancing and personal protective equipment (PPE) in the workplace (34 per cent), and other rights violations (4 per cent) — and compared this to a sample of cases across 2019.

It found the number of whistleblowing reports ignored by employers increased during lockdown. In 2019, 31 per cent of disclosures were ignored, but this increased to 41 per cent during the Covid-19 outbreak.

Calls to the charity's helpline also rose by 37 per cent between March and September this year, compared to the same period in 2019.

Liz Gardiner, chief executive at Protect, said there was never an excuse for employers to ignore whistleblowers. But, she added: "During a global pandemic, it is a danger for us all when concerns are not acted on and the consequences could be a matter of life and death.

"We all owe thanks to whistleblowers who do the right thing and speak out about wrongdoing in the workplace. But if employers continue to ignore their concerns — or worse — dismiss them for speaking up, we all need to be extremely concerned," she said.

Ranjit Dhindsa, partner and head of employment at Fieldfisher, said the findings were evidence that many employers did not have effective procedures in place to address employee concerns. "They should provide sources of help and guidance to whistleblowers; seek to instil a culture in which individuals are encouraged to come forward with concerns; and ensure individuals are protected through a confidential investigation of their concerns," she said.

Dhindsa added: "During a pandemic, this is of heightened concern as failures to respond to concerns could be life or death."

Kate Palmer, associate director of HR advisory at Peninsula, commented that the report could prompt the government to improve protections for whistleblowers. "At the moment though, the government has not released further guidance on how they wish to tackle this issue, if at all, with regards to the employers who ignore whistleblowers' disclosures," she said.

Employers who sacked whistleblowers and were found guilty of unfair dismissal, faced paying a significant amount in damages, including "a basic award of up to £16,140, as well as an uncapped compensatory award," Palmer warned.

The report called for employers to be forced by law to have whistleblowing arrangements in place, and for the government to create a new regulator, the Whistleblower Commission, which would have the power to fine companies in breach of whistleblowing standards. In addition, legal aid should be extended to whistleblowers taking their employers to employment tribunal, it said.

Darren Jones, Labour MP and chair of the business, energy and industrial strategy select committee, said whistleblowing was a vital means for workers to raise concerns. "Putting in place effective whistleblowing arrangements should be a key part of good governance, helping to ensure that people are encouraged to speak out and that their concerns are listened to and acted on," he said.

Calls for more to be done to protect whistleblowers came amid growing awareness of the problem. Scotland's first minister, Nicola Sturgeon, said yesterday (29 October) that employees under pressure from their employers to break Covid-19 rules could report this "dangerous behaviour" directly to her.

"To workers across the country: if you are being put under pressure by an employer to act in any of these ways, get in touch with your local MSP [Member of the Scottish Parliament], get in touch with the local environmental health office, email me directly," she said.

"Because that would be dangerous behaviour that we would take steps to ensure is addressed fully and promptly."

Issues of safety breaches by employers were also highlighted in Baroness Doreen Lawrence's review on the impact of Covid-19 on ethnic minority communities, released this week. "Many respondents told us about inadequate PPE, failures to implement and access risk assessments and insufficient government guidance on their protection," the report said.

Protect's report: "The best warning system: whistleblowing during Covid-19. An examination of the experiences of UK whistleblowers during a global pandemic," October 2020

Whistleblower cases are a warning to Covid-19 vaccine makers

A whistleblower lawyer's perspective on corporate fraud & corruption

Erika Kelton

Forbes, 20 November 2020

Pfizer's and Moderna's announcements that each company has developed what seem to be effective Covid-19 vaccines have brought great rejoicing, but that news and the surge in Covid-19 cases increase the tremendous pressure on all vaccine developers to quickly produce world-saving measures.

As pharma races to develop and manufacture Covid-19 vaccines, whistleblowers are expected to play an important role in ensuring that vaccine manufacturers don't succumb to the temptation to take unsafe shortcuts, exaggerate positive results, sidestep good manufacturing practices or fail to comply with sensitive handling requirements in distributing vaccines to the public.

Whistleblowers have long been essential in policing the pharma industry and exposing misconduct that is hidden from regulators.

Two whistleblower cases — one settled and one ongoing — are particularly relevant as vaccine developers proceed rapidly and scale up production facilities in anticipation of manufacturing Covid-19 vaccines.

In one whistleblower case, GlaxoSmithKline paid $750 million to settle civil and criminal charges relating to whistleblower allegations that its manufacturing facility in Puerto Rico violated FDA regulations governing "current good manufacturing practices."

The whistleblower, who was a quality assurance manager, alleged in a "qui tam" lawsuit that GSK was manufacturing drugs that contained too much or too little of the active ingredients and that its Puerto Rico manufacturing operations failed to comply with mandatory requirements for sterile manufacturing and produced drugs that were contaminated.

In the second whistleblower case, which is ongoing, a medical researcher filed a qui tam lawsuit against Roche Holdings in 2014 for claims involving Tamiflu, an oral antiviral prescription drug that Roche marketed and sold as a seasonal influenza treatment. The lawsuit alleges that the government purchased 50 million courses of Tamiflu based on false claims about the drug's effectiveness.

Roche lost the latest round in the case in September when a federal district court judge denied the pharma company's motion to dismiss. The lawsuit says that the federal government and state governments spent about $1.5 billion to stockpile Tamiflu as part of its Pandemic Influenza Preparedness Plan.

A number of major pharma companies have received substantial government funds for developing vaccines or for the purchase of vaccines once approved. These include Pfizer ($1.95 billion for 100 doses of the vaccine), Sanofi partnering with GSK ($2.1 billion for development and purchase of 100 million doses) and Johnson & Johnson ($1 billion for development and purchase of 100 million doses).

Smaller companies such as Moderna ($1 billion for development plus $1.5 billion for 100 million doses) and Novavax ($1.6 billion) also have gotten significant federal funding.

The federal government's funding of vaccine development and its expected purchase of hundreds of millions of vaccine doses mean that whistleblowers who are aware of noncompliant practices involving a Covid-19 vaccine may be well positioned to file a qui tam lawsuit to stop the problems.

The False Claims Act allows private citizens who know of companies committing fraud against the government to file a qui tam lawsuit and recover funds on the government's behalf. Whistleblowers are entitled to protection against employment retaliation and a significant reward if government funds are recovered. The GSK whistleblower was awarded more than $96 million.

The challenges of developing a vaccine, manufacturing it and distributing it around the world are immense. Serious problems that affect the safety and efficacy of the vaccine can occur at any step.

Already some issues are popping up.

Reuters reported last month that US drug inspectors uncovered serious quality control problems at an Eli Lilly pharmaceutical plant in New Jersey that is ramping up to manufacture a promising COVID-19 drug. Lilly told the news agency that it has launched a "comprehensive remediation plan," increased staffing at the site and was working "aggressively" to address all concerns raised during the inspection.

With almost 200 projects underway to develop Covid-19 vaccines, companies should pay close attention to legal and regulatory compliance. Whistleblowers will be essential watchdogs to ensure the validity of trial results and the efficacy and safety of desperately needed Covid-19 vaccines. The stakes couldn't be higher.

Sally Masterton

2020 Blueprint UK Whistleblowing Prize

SALLY MASTERTON is the winner of the 2020 Blueprint UK Whistleblowing Prize. Her whistleblowing played a key role in bringing to light one of the largest banking frauds in UK history. The full amount of the money involved is still not known by the public, but is estimated to be in the order of £1 billion.

Sally's careful research and disclosures also revealed the bank's efforts to sweep knowledge of the wrongdoing under the carpet.

She is a central character in the search for accountability from those responsible. It is a story which is still ongoing.

The story begins with the 2007–08 banking crisis, the consequences of which are still being felt today.

At the height of the financial crisis in 2008, Lloyds Banking Group became the UK's largest retail bank when it acquired Scottish banking and insurance company HBOS, which was itself formed from a merger of Halifax plc and Bank of Scotland in 2001. The UK

government had encouraged the deal to shore up HBOS, which had been left close to collapse when money stopped flowing through commercial lending markets after the 2007 credit crunch.

In reality HBOS' problems were greater than anyone knew. Prior to the acquisition by Lloyds, a corrupt HBOS employee in the business' Reading office had been busy colluding with external partners to rip off the bank's own corporate customers, driving many viable businesses to the wall. Many of those affected were small, local enterprises feeling the impact of the financial crash brought about by others higher up the chain — the start-ups developed at someone's kitchen table, the couple who had poured their lifesavings into building the music business they had always talked about.

Business customers from across south-east England who needed additional funding were directed to HBOS' Reading branch, which would oblige the company to buy corporate services from a specific external consultancy, Quayside Corporate Services, as a precondition for obtaining a loan. Evidence presented at the trial of Quayside and former HBOS Reading staff in September 2016 described inappropriately large loans being made to businesses on Quayside's recommendation, funds from which were then siphoned off with large consultancy fees. In some cases, Quayside had taken over control of people's businesses entirely.

The fraudulent scheme had begun before the Lloyds takeover and continued after it. As a result of the fraud, businesses collapsed and many individuals suffered financial distress. Some were left entirely destitute. In one case, Lloyds tried to repossess a couple's home 11 times between January 2009 to August 2010. A judge finally suspended those proceedings pending the conclusion of the fraud prosecution. Six people connected with the HBOS Reading fraud were eventually convicted in January 2017.

The HBOS story is important not only for the enormous amounts of money involved — police estimate the total cost amounting to up to a billion pounds — but for the way Lloyds responded to the wrongdoing and subsequent cover-ups that had come from within its own ranks.

Sally Masterton was a forensic accountant and insolvency practitioner, who had worked for HBOS since 1998 and then, after the takeover, for Lloyds. She worked in the "high risk" unit of the bank which managed the bank's small business customers, who were seen as more likely to default and who became the main victims of the Reading fraud.

By 2010, the ringleader of the Reading fraud had been arrested and there was an active police investigation underway ("Operation Hornet"). Masterton's own investigations inside the bank, which had the advantage of unrestricted access to internal records, had revealed evidence of possible money laundering and theft, as well as unauthorised lending that the police should have been aware of. The more Masterton dug, the more she hit internal walls. Bank staff told her to stop digging. A senior colleague had previously suggested that she destroy internal documents. She refused.

Instead, Masterton helped Thames Valley Police to piece together what had happened. The bank allowed her to meet with the police, albeit in a highly controlled manner. After her first meeting with detectives in 2013, Masterton was shocked at how little they knew, according to *The Financial Times.*

Even as the bank's legal department told her that an internal investigation team had given everything to the police investigation, she had found that police investigators had been "severely disadvantaged" and "were lacking even basic information from the bank."

So vital was Masterton's forensic work, the police tried to have her co-opted onto the investigation. In a letter to Lloyds, one of the officers wrote that her evidence had "provided in an understandable format that in a way explains in essence what is banking industry (LBG) banking practices," adding that "the usefulness of such explanation is vital to the ongoing investigation."

In 2013, Masterton was given permission to document the disclosure failings and the criminality she had uncovered. The paper she produced has become known as the Project Lord Turnbull report. It alleges not only that HBOS deliberately concealed criminal activity at their Reading branch prior to the Lloyds takeover, but that Lloyds executives failed to act appropriately once the issue was brought to their attention.

The report was put into the public domain by parliamentarians from the All-Party Parliamentary Group (APPG) on Fair Business Banking in June 2018.

In their statement accompanying the release of the report, the APPG said it "makes serious allegations of fraud, malpractice and a subsequent cover up at Lloyds and HBOS … The contents and allegations contained within this report must be available to rigorous public scrutiny and full, forensic and expeditious investigations by regulators, fraud and crime agencies. Important though the report is, it should be considered in the context of other contemporaneous evidence."

By this point, Masterton had had to leave Lloyds. In mid-2013, Masterton had made a formal complaint to the bank about its lack of cooperation with the police investigation and the harassment she had experienced for doing so. The bank appointed a City law firm to investigate Masterton's allegations, which decided to focus on Masterton's

complaints about harassment before it would consider anything to do with the police investigation or allegations of a cover-up.

Splitting up a complaint in this way is a known tactic for dealing with difficult reports bringing unwelcome news: by dismissing an individual's complaints about their treatment, the credibility of their other allegations can be diminished and difficult issues swept under the carpet. This is exactly what happened in Sally Masterton's case: once the harassment case was dismissed, Lloyds placed her on leave and prevented her having anything more to do with the police investigation. The bank told the regulator, the Financial Conduct Authority, that it questioned the credibility of Masterton's other allegations and did not see fit to investigate them.

Masterton left Lloyds and raised a constructive dismissal case against her former employers, who have since made two separate settlement agreements with her. As part of their second settlement in November 2018, Lloyds admitted that they had commissioned the Project Lord Turnbull report and apologised to Sally Masterton, who they said had "acted always with the best of intentions."

Like many whistleblowers, Masterton faces legal restrictions on her ability to speak publicly.

The six individuals convicted for their part in the HBOS Reading Fraud in 2017 included two former Lloyds employees. The six were sentenced to a combined total of 47 years' imprisonment, after a jury at Southwark Crown Court heard how money siphoned from HBOS customers had paid for kickbacks, prostitutes and holidays in Barbados.

In the wake of increasing public pressure, Lloyds appointed former High Court judge Dame Linda Dobbs DBE to undertake an independent investigation into the bank's knowledge of, and actions in regard to, the HBOS Reading fraud.

More than 50 barristers have worked on the Dobbs Inquiry in the three years since it was set up in 2017. The Inquiry is due to deliver its report in the first half of 2021.

In 2019, the FCA fined Bank of Scotland £45.5 million for its failures to disclose information related to suspected fraud at its Reading branch. The investigation had been placed on hold in 2013 in order to let the criminal case conclude first.

In June 2020, the FCA fined Lloyds again, this time for £64 million for mistreating hundreds of thousands of mortgage customers in financial difficulties.

It was the largest fine ever imposed by the financial regulator for mortgage-related failures. Lloyds agreed to accept the watchdog's findings.

On top of this, Lloyds and its subsidiary units, Bank of Scotland and The Mortgage Business, estimate they have had to pay approximately £300 million in redress to more than half a million customers.

The regulator made a special warning, in assigning the second fine, that the COVID-19 pandemic "only heightens the importance of firms treating customers in financial difficulty fairly and appropriately."

Whistleblowing is an essential part of this story. Sally Masterton's courage and determination in bringing to light serious financial crimes is to be commended.

The largest bank in the UK wields enormous power. By comparison, a local shopkeeper or someone trying to set up their first small business has little power when going up against such a monolith in an effort to get justice. The overwhelming imbalance in the power relationship is one reason we must have corrective mechanisms, like protections for whistleblowers, in society.

Sally's efforts contributed to justice for hundreds of thousands of people who suffered because of this power imbalance and could not get redress.

The full impact of those disclosures is still on the horizon, and may yet be revealed in the Dobbs Inquiry report when it is published.

Congratulations Sally Masterton, winner of the 2020 Blueprint UK Whistleblowing Prize.

The malicious whistleblower

Selective and out-of-context revelations, as seen in the Sushant Singh Rajput case, go against constitutional rights of the accused, harm democracy.

Meenakshi Arora and Payal Chawla
The Indian Express
28 September 2020

FOR DEMOCRACY TO thrive, freedom of speech and freedom of the press are not just important, but essential facets. As the fourth estate, the media must work for the people, not against them.

SAMUEL Shaw and Richard Marven, two naval officers, witnessed the torture of British prisoners of war at the hands of their commanding officer, Esek Hopkins. Outraged by his action, they reported him, which resulted in their dismissal from the US Navy. That was 1777. Shaw and Marven sought Congressional support and testified before the Congress. A year later, on July 30, 1778, the US Congress passed a whistleblower resolution, now widely considered as the world's first whistleblower protection law. Many countries have since enacted laws for the protection of whistleblowers.

Two hundred years later, India almost did the same. In 2011, the Whistleblowers Protection Act was drafted. The Act was later renamed The Whistleblowers Protection Act, 2014 and was passed by both Houses of Parliament, but never notified. Meanwhile, whistleblowers were encouraged to call out corporations for corporate fraud, with requisite provisions under the Companies Act, 2013 and the SEBI legislations. But protections for whistleblowers against the government remained elusive.

Whistleblowers who enjoy the legal protection of a whistleblower law fall within the first of three categories of "informants." The second category of whistleblowers are those that fall outside the realm of this protection and are referred to, opprobriously, as "leakers." There are numerous examples in history — from Frank Serpico who leaked information about corruption in the NYPD, to Chelsea Manning's leaks of classified information including the Baghdad strikes in 2009, to Edward Snowden, a former NSA contractor, who informed the world about the illegal violation of their privacy.

This types of leakers fall foul of the law and do not enjoy whistleblower protection, bringing them in direct confrontation with the State. The State's justifications in not extending the protection of law to these leakers is almost always based on the assertion that their actions were subversive to national security. This was also the primary basis for the introduction of the Whistleblowers Protection (Amendment) Bill, 2015, even while the 2014 Act was pending notification, severely constricting its scope. Many will recall the threats of invocation of the Official Secrets Act against *The Hindu* newspaper for publishing the Rafale papers. The US Government too, charged Snowden with treason for violating the Espionage Act, 1917, stating that Snowden's action risked national security.

These leaks, though not legal, have a justification rooted in morality. Despite the personal risk, these leakers are usually driven by their belief in the preservation of democratic rights. They believe that statutory authorities are ultimately answerable only to the people. Snowden, for instance, has always maintained that the US Government's action of surveillance violated individual rights of privacy. Snowden's lawyer, Jesselyn Rodack, argues that while Snowden may have violated an agreement of secrecy with the US Government, the same was merely a contractual breach and one that was less important "than the social contract a democracy has with its citizens". The first and second category of leakers are undoubtedly vital to democracy, in so far as they are an important check against state and corporate excesses

But there is also a third category. These are selective leaks undertaken at the behest of the State instrumentalities against individuals. These leakers neither enjoy legal protection nor any moral justification. They, in fact, work against the notions of democracy and the people.

It is something akin we all recently witnessed in the SSR case. The leaks were selective, high pitched, designed to tantalise the masses, resulting in the hapless accused feeling so cornered she felt that she needed to explain her actions to the public-at-large, virtually putting out her entire defence. As an accused, she has the constitutional right to silence, which was wrenched away only to momentarily satiate a voyeuristic desire. A fellow citizen's constitutional entitlements were unabashedly trampled, in a gross abuse of State power, for the profits of the media.

In Rajinderan Chingaravelu v. Mr R. K. Mishra, Additional Commissioner of IT, the Supreme Court held — "Premature disclosures or leakage to the media in a pending investigation will only jeopardise and impede further investigation, but many a time, allow the real culprits to escape from law." More recently, the Delhi High Court in the matter of Devangana Kalita v. Delhi Police observed, "Selective disclosure of information calculated to sway the public opinion to believe that an accused is guilty of the alleged offence; to use electronic or other media to run a campaign to besmirch the reputation or credibility of the person concerned; and to make questionable claims of solving cases and apprehending the guilty while the investigations are at a nascent stage, would clearly be impermissible."

For democracy to thrive, freedom of speech and freedom of the press are not just important, but essential facets. As the fourth estate, the media must work for the people, not against them. As defenders of the people, the relationship of journalists and leakers is necessary but it is also complicated insofar as the credibility of the whistleblower needs to be thoroughly checked, their claims independently verified and, above all, their anonymity maintained.

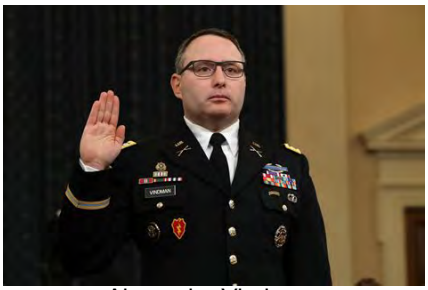
Any journalist and leaker who feels that the lines between these three distinct classes are blurred, only needs to look to the roles of Bob Woodward and Carl Bernstein in bringing down the Nixon Government. While we, the people, watch the persecution of Julian Assange, the only relevant question the media and leaker must ask — who is your ultimate beneficiary? If the answer is the people, then democracy is the justification.

Meenakshi Arora is a Senior Advocate, Supreme Court, and Payal Chawla is a practising advocate and founder of JusContractus.

The whistleblower's dilemma

Ankush Khardori
Columbia Journalism Review
30 October 2020

IT'S BEEN a busy few months for whistleblowers. In early September, a senior official in the Department of Homeland Security alleged that top agency officials had stifled the work of analysts who were raising concerns about threats from Russian election interference and white supremacists. A week later, Lt. Col. Alexander Vindman sat down with NBC News' Lester Holt to talk about how he was pushed out of the government after he testified against President Trump in congressional impeachment proceedings last year. And early this month, the official who led the government's vaccine efforts resigned after allegedly incurring the wrath of administration officials because he opposed political efforts to tout the benefits of hydroxychloroquine to treat Covid-19.


Alexander Vindman

Regardless of which candidate wins on Tuesday, the election almost certainly will churn up a new round of whistleblowers from inside the Trump administration and beyond, as insiders either bail on a failed presidency or seek to set the record straight before a second term. But we should not mistake any short-term flurry of activity for long-term change in the willingness of government whistleblowers to come forward—at least not yet.

Until earlier this year, I was a prosecutor at the Justice Department in Washington, DC, specializing in financial fraud. I also made disclosures of misconduct during my time in the department—some of which drew coverage from *The Wall Street Journal*, *National Review*, and legal trade publications—and I eventually left the government as a result. So I have some experience with how a disclosure of misconduct can impact someone personally—including the pros and cons of becoming the subject of media coverage, and how that coverage might shape people's incentives, either to make internal disclosures of misconduct that may draw press attention or to provide their accounts directly to media outlets.

This isn't an attempt to provide a comprehensive answer to the question of why a government employee with knowledge of potential misconduct might be reluctant to come forward. Still, there are several issues involving the operations of the media itself that I believe have gotten less attention than they deserve, and that I believe have had a material effect on the willingness of federal employees to speak out.

When the media unearths a government employee's disclosure of misconduct, there is an understandable desire to be first to report on it—or, at the very least, to cover the initial complaint—since the public's attention eventually moves on. But reporters often do not follow developments closely enough when the government tries to discredit these employees—even though that sends a powerful message to other government officials about what might happen to them if they were to come forward with their own accounts.

The experience of a Justice Department employee named John Elias is instructive. Elias testified before the House Judiciary Committee this summer about his concerns about the politicization of antitrust enforcement inquiries. He prepared an internal complaint that provided persuasive circumstantial evidence that a series of antitrust reviews in the cannabis industry had been prompted by Attorney General William Barr's personal distaste for the product, rather than legitimate concerns under the law. His allegations were fairly widely covered, given the news attention span of our era.

William Barr

Shortly after Elias's testimony, *Politico* reported on a two-page report from the Justice Department's Office of Professional Responsibility—the office that handles internal ethics complaints—that summarized the results of its investigation into Elias's allegations. It looked bad for Elias. The report purported to rebut his factual claims and concluded that "even if" the "allegations were true," the "pretextual investigations" alleged by Elias "would not have violated any relevant laws, regulations, rules, policies, or guidelines."

John Elias

Politico did not assess the credibility of the memo for its readers; in fact, the memo was absurd on its face. No credible reading of the ethical rules that govern lawyers' conduct would permit "pretextual" investigations. The department's ethics office also has a notoriously bad record of properly handling allegations of misconduct, which is often attributed to the fact that the office reports directly to the Attorney General—who, in this case, was the literal subject of Elias's complaint. None of this was mentioned in *Politico*'s piece, even though it bore directly on the credibility of the department's effort to discredit Elias.

Things got worse from there. About a week later, *Politico* reported on another response to Elias's complaint from the department—in this case, a lengthy letter to Congress that claimed that Elias' testimony was "misleading and lack[ed] critical facts." The story made no effort to sort through the supposed dispute, or even to provide an independent assessment from someone with experience in the area. In fact, a close reading of the letter—by a former Justice Department official turned law professor who was writing for the website *Just Security*—showed that it had not, in fact, disposed of Elias's concerns. (Asked to comment for this story, a *Politico* representative said that it "does not comment on the sourcing, methods, and editorial process used" for its articles but that "[w]e stand by our reporting in both of these instances and, more broadly, our coverage of the Department of Justice which has consistently held the department to account.")

I recently had a similar but less egregious experience. It occurred as a result of a *Wall Street Journal* report about a legal dispute that arose in federal court in Chicago after news reports concerning a memo that I submitted to the Justice Department's inspector general shortly before I left. The memo discussed potential misrepresentations to courts made by prosecutors in order to generate more time to build their cases by misusing a little-known statutory provision.

The *Journal* has done very impressive coverage of the somewhat arcane and important issue at the center of my disclosure, but I was surprised when I read in the paper's most recent piece that, in the course of the dispute in Chicago, the department had "denied the allegations" that I had made.

In fact, no such thing had happened. The department had carefully avoided engaging with the factual questions and

had instead opted for the aggressive strategy of arguing that it didn't matter if the conduct at issue had occurred because there's nothing that prevents the department from submitting even "nakedly pretextual" filings with courts (the government's own words). The *Journal* had itself reported that non-denial five months prior.

I think that position is absurd on its face, but that's beside the point. A casual reader of the *Journal*'s latest piece—someone who may have read none of the earlier coverage—could easily have been led to believe that there has been a debate on the factual questions raised by my disclosure even though there has been none whatsoever.

The upshot of all this is that it's incumbent on editors to ensure that their reporters are given the time and freedom to cover subsequent developments just as thoroughly as initial disclosures of potential misconduct. The media's failure to do so may deter other people from coming forward, out of justifiable fear of being smeared by unscrupulous former colleagues. This problem has been all the more difficult to understand given the media's general embrace of the fact that people throughout the Trump administration routinely lie about things both big and small. Why would these officials be fair or reliable in their responses to people who make them look bad?

It's no secret that news outlets have mishandled information in ways that may have actively harmed federal employees who sought to disclose misconduct.

The most prominent recent example was *The Intercept*'s handling of a classified document that it received from an anonymous source about Russian interference in the 2016 election. When the outlet contacted the government for a response, it apparently provided a copy that, as the *Times* put it, "allowed the document's provenance to be quickly deduced." The source is now serving a five-year prison sentence, and although I don't endorse her conduct, I remain amazed by how irresponsibly *The Intercept* acted as a newsgathering operation.

Last year, the *Times* itself published a lengthy story about the official whose complaint set off the Ukraine scandal—a report that included details sufficient to identify him by virtually anyone who worked with him and by any acquaintance with some meaningful familiarity with his work. The report set off a vigorous debate about whether the paper had outed him.

To be sure, the issues surrounding the *Times*'s decision to publish that story were not straightforward. But coming from a paper that published an op-ed by the Trump administration official known as "Anonymous"—who, we recently learned, is a now-former Homeland Security official named Miles Taylor—there was no easily identifiable principle to account for the *Times*'s differential handling of these people's identities. In its recent story about Taylor, the *Times* noted that its op-ed pages "are managed separately from the news department, which was never told of Anonymous's identity." Still, to a reader, the lesson may seem to be that the protection the paper would afford you might be contingent on how media-savvy you are.

Miles Taylor

Here too, I have had a similarly unpleasant experience. Last year, I learned that the Justice Department had opened an investigation following an inquiry from a reporter at the Associated Press concerning the serial ineptitude and ethical misconduct of a senior career official that I had worked with. This particular official's failings were well known within the department and at the FBI. This person's conduct had, among other things, resulted in a court admonishing them for having committed "a significant error in judgment" based on inappropriate "shortcuts," and it could have resulted—on several different occasions—in the dismissal of an important prosecution that I led concerning a fraud that cost victims across the world nearly $150 million.

The inquiry at issue was from an AP reporter named Michael Kunzelman, who had been following the case. In it, he wrote to the senior official that he had "obtained a copy" of an internal memo that I had written about them, and he asked the subject for comment.

Needless to say, the overture did not go over well. It led the department to claim, as they later put it in a memo to me, that Kunzelman "was in possession" of my memo, and they suspended me pending an "investigation" into whether I had released "sensitive Department information to the media."

That claim was false. It was, in fact, part of a months-long effort by my office's senior management—all of whom, perhaps not coincidentally, had acquired their positions during the Trump administration—to punish me for raising those concerns. But the AP's sloppy and ill-considered email was all they needed. I stuck around for several months to see if the "investigation" was going anywhere, until it became clear that it was not. In fact, more than a year later, no one at the department has even attempted to contact me for my side of the story as part of this "investigation."

To make matters worse, the AP never ran the story Kunzelman had been reporting—something they probably should've figured out before approaching the department with a request for comment. (I reached out to both Kunzelman and a representative at the AP multiple times to give them an opportunity to comment for this piece, but they did not respond.)

In the scheme of things, none of what happened mattered much at the time, except to me. The underlying misconduct was extremely bad as a professional matter—and it reflected a serious dereliction of duty as a prosecutor, a position where the public deserves the highest-quality work—but it wasn't the sort of thing that I would've expected to draw much interest outside of the legal profession.

But these are marquee names in the news industry—the *Times*, the AP, *The Intercept*—and federal employees follow the news like everybody else. It is entirely rational for them to be reticent about coming forward when they learn about episodes like these. Even if that weren't the case, it would remain imperative for news outlets to treat federal employees—whose jobs may be at risk—with the sort of care and respect that they would expect themselves if their jobs were on the line.

WBA AGM

Whistleblowers Australia
Annual General Meeting
22nd November 2020
via Zoom

1. Meeting opened at 9.20am.
Meeting opened by Cynthia Kardell, President. Minutes taken by Jeannie Berger, Secretary.

2. Attendees: Cynthia Kardell, Jeannie Berger, Brian Martin, Feliks Perera, Michael Cole, Robina Cosser, Maggie Dawkins, Richard Gates, Stacey Higgins, Ray Hoser, Katrina McLean, Alan Smith, Lyn Simpson, Geoff Turner, Rosemary Greaves and Jack Mcglone.

3. Apologies: Karl Pelechowski, Jim Page and Kathryn Kelly.

4. Previous Minutes, AGM 2019
Cynthia Kardell referred to copies of the draft minutes, published in the January 2019 edition of *The Whistle.*

Cynthia invited a motion that the minutes be accepted as a true and accurate record of the 2019 AGM.
Proposed: Richard Gates
Seconded: Maggie Dawkins
Passed

4(1). Business arising (nil)

5. Election of office bearers

5(1) Position of president
Cynthia Kardell, nominee for position of national president, stood down for Brian Martin to act as chair. Because there were no other nominees, Cynthia was declared elected.

5(2) Other office bearer positions (Cynthia resumed the chair.)

The following, being the only nominees, were declared elected.

Vice President: Brian Martin
Junior Vice President: Michael Cole
Treasurer: Feliks Perera
Secretary: Jeannie Berger
National Director: Lynn Simpson

Amid widespread allegations of election fraud in 2020, WBA has remained free of taint — so far

5(3) Ordinary committee members (6 positions).
Because there were no other nominees, the following were declared elected.

Maggie Dawkins
Richard Gates
Stacey Higgins
Katrina McLean
John Stace
Geoff Turner


This isn't a member of the national committee and this isn't WBA's office. We've put in a bid for this office, offering $250 per year.

President Cynthia Kardell thanked everyone for their continuing commitment to the organization.

6. Public Officer
Margaret Banas has agreed to remain the public officer. Cynthia asked the meeting to acknowledge and thank Margaret Banas for her continuing support and good work.

6(1) Cynthia Kardell invited a motion that the AGM nominates and authorises Margaret Banas, the public officer, to complete and sign the required submission of Form 12A to the Department of Fair Trading on behalf of the organisation, together with the lodgement fee, as provided by the Treasurer.
Proposed: Richard Gates
Seconded: Stacey Higgins
Passed


WBA has several wonder women among its ranks, but not this one. We're trying to recruit her.

7. Treasurer's Report: Feliks Perera

7(1) Feliks tabled a financial statement for 12-month period ending 30 June 2020. A motion was put forward to accept the financial statement.
Moved: Richard Gates
Seconded: Michael Cole
Passed

Feliks' report

Read out by Cynthia as Feliks had a technical sound issue.

This woman doesn't have a sound problem, but she's not Feliks and she wasn't at the AGM.

Once again it is my great pleasure to present to the membership the annual accounts to the financial year ending 30th June 2020.

The association is in a strong financial position thanks to renewal of memberships, and the generous donations from the members. The income for the year amounted to $4,887.03, which includes donations of $1,565.00. The expenditure amounted to $7,479.97, leaving an excess of expenditure over income of $2,592.94.

The cost of *The Whistle* production and mailing has raised due to the increased postage costs, and the subsidy for the annual conference greatly benefits the members. I trust that in the future years, the association will be able to continue subsidising the conference. The deposit paid for the 2020 conference, which is cancelled due to the Covid crisis, is being transferred for the conference planned for 2021.

Feliks didn't say anything about WBA's bank vault. He would have if he knew how to find it.

Again, I want to thank the membership for their continued support of the Association, and the generous donations that keeps the battle for whistleblower protection work going.

In the midst of ever-increasing number of incidents of whistleblowing, the membership needs to look to recruiting more members to keep the voice of the association strong.

ANNUAL ACCOUNTS TO YEAR ENDING 30 JUNE 2020

INCOME	
DONATIONS	$1565.00
MEMBERSHIP FEES	$3075.00
INTEREST ON FIXED DEPOSIT	$242.47
BANK INTEREST	$5.95
TOTAL INCOME	**$4887.03**
EXPENDITURE	
WHISTLE PRODUCTION	$3849.79
CONFERENCE SUBSIDY 2019	$3293.60
RETURN TO BRANCHES	$250.00
WEBSITE FEE	$39.58
ANNUAL RETURN FEES	$49.00
TOTAL EXPENSES	**$7479.97**
EXCESS OF EXPENDITURE OVER INCOME	($2592.94)

BALANCE SHEET, 30 JUNE 2020

ACCUMULATED FUND BROUGHT FORWARD	$12807.28
LESS EXCESS OF EXPENDITURE OVER INCOME	($2592.94)
TOTAL	$10214.34
ASSETS AT NATIONAL BANK	$9614.34
DEPOSIT FOR 2020 CONFERENCE	$600.00
TOTAL	**$10214.34**

8. Other Reports

8. (1) **Cynthia Kardell,** *President*

This year like the last has been a year like no other, although for very different reasons. Covid-19 has laid waste to many a plan and none more important to us than the annual conference and AGM we had planned for this weekend. Still, at least some of us are together today in space and time courtesy of Zoom, but even so I really look forward to seeing you all in person on 20–21 November next year.

Every year I get the opportunity to reflect on some rather special people. There's Brian, our vice president, editor of *The Whistle* and a steady hand and inspiration since the early nineties. Feliks, our treasurer who gives the accounts the timely, attention they deserve. Jeannie, our secretary who manages to build bridges, even as she chases unpaid fees. Stacey, who has steadily lifted our Facebook profile, which is no easy thing. Maggie, who continues to blow any whistle that comes to hand. Robina, who is retiring, but hopefully not in the ways that matter. Michael, Richard and Lynn, who take the role of "contact" so seriously, it bodes well for our future. So thank you everyone as it has been entirely my pleasure.

I have had a busy year with the usual calls for help and assistance, mentoring would be whistleblowers, keeping in contact with the members, writing the odd article for the newsletter or post for our Facebook page, writing to politicians and others about the things that matter to us and making a submission about the risks posed by the covidSafe App, which turned out to be a flop for the usual reasons. I hope to do more this coming year with your help.

Some serious whistleblowers have done really well this year by remaining anonymous after getting a politician and the media involved, which seems to have given them some control over the events while keeping them safely out of the limelight and harm's way. This approach predates our flaky legislated whistleblowing systems and is still to be recommended. I'll give you just two examples, both of which are likely to leave a real legacy for the good.

Kerry Packer's Crown Resorts whistleblowers. Last July insider whistleblowers went to Independent MP Andrew Wilkie on how Crown enabled money laundering by organised criminal syndicates, who worked through junket operators to infiltrate Crown's casinos in Melbourne and Perth. They got together with Nine's "60 Minutes" program, which ran with the story. The Independent Liquor and Gaming Authority then appointed former judge Patricia Bergin to also inquire into Crown's suitability to hold the new Barangaroo gaming licence in Sydney. Director and (then) chair, former MP Helen Coonan, acknowledged in evidence that Crown had facilitated money-laundering on an industrial scale. She with other directors later jumped ship. Bergin is to hand down her report before Christmas, with the NSW government having decided that the new Barangaroo casino will not open in January as planned. Bergin also castigated Kerry Packer and Crown for their part, with nineteen of its employees, including three Australians, having to plead guilty to illegally organizing gambling trips out of mainland China.

Because of bad publicity, iCare has been casting about for a new name

Worksafe and iCare whistleblowers. Icare whistleblowers went to NSW Greens MP David Shoebridge and journalists, triggering an Upper House inquiry as the backdrop to a much wider story. *The Age, The Sydney Morning Herald* and ABC TV's "Four Corners" pulled together a joint investigation into the $60 billion NSW state-government-run compensation system and Victoria's Worksafe, which Ombudsman Deborah Glass found had presided over immoral and unethical practices, after external insurance agents were offered financial incentives to terminate coverage for injured workers. In NSW the relevant regulatory authority has referred iCare to the ICAC amid repeated warnings about its deteriorating financial position and solvency risks.

Both are examples of what can be achieved when the wrongdoing is investigated on its merits.

AGM minutes can be pretty boring, so we need to spice them up a bit. A risk is that you'll just look at the pictures and not read the text. Now get back to it.

And then there's defence lawyer David McBride, who was not able to remain anonymous. He blew the whistle internally in 2014, before leaking the "Afghan files" to the ABC two years later, to stop the logjam further up the line of command. The government slapped a criminal suit on him in 2018, a month before approving the appointment of former judge and reservist Paul Brereton SC to inquire into those very same war crimes allegedly committed in Afghanistan between 2005 and 2016. A redacted version of the Brereton Report was made public only days ago, with the prime minister announcing a new Office of the Special Investigator (OSI) within Minister Dutton's portfolio to work out who, of the 19 men singled out, could be brought to trial. A separate oversight panel called the Afghanistan Inquiry Implementation Oversight Panel would also be established to oversee OSI investigations and provide quarterly reports directly to Defence Minister Linda Reynolds. The Prime Minister enthusiastically explained how it might take years to "get it right." If his history in so far as the Murray Darling Basin and Ruby Princess royal commissions is anything to go by, he didn't mean putting it to rights. Why else make Peter Dutton the OSI's gatekeeper, if not to slam the door shut when things get a little too close for comfort?


Peter Dutton is not Cynthia's favourite person

But earlier this year McBride decided to sue the government for suing him, claiming it is a reprisal and illegal under whistleblowing legislation. If he succeeds the government may have to drop its prosecution, but I can't see that happening as it may mean having to claw back some of those "terror" related laws that made it all possible in the first place. This is why I think it abandoned the idea of prosecuting journalists Annika Smethurst, Sam Clark and Dan Oakes, but pushed on with persecuting David McBride, Richard Boyle, Witness K and his lawyer Bernard Collaery as a way of consolidating its position in the face of real opposition from media giants News.com and Nine News. This shouldn't be seen as good news, because those terror-related laws have got to go.

Even so, whistleblowers seem to be far more prepared, more strategic and less risk averse, knowing that the PID systems are seriously conflicted in their design to frustrate, even punish whistleblowing, which is why I'm optimistic about the public's best interests remaining paramount.

9. Other Business.
9. (1) Richard Gates proposed a special thanks to Cynthia for all her good work.
Seconded by Robina Cosser
Passed

9. (2) AGM 2021 in Sydney (Parramatta) on the 22 November 2021

10. AGM closed 10.30AM

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Thanks to Cynthia Kardell and Lynn Simpson for proofreading.

Rhetoric versus reality

Australia's political leaders seem to think they care about whistleblowers. Just look at the wonderful whistleblower laws.

For the reality, just observe what the government is or isn't doing in regard to these individuals.

Whoops, ran out of space. There are others too.

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.

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1. Pay Whistleblowers Australia Inc by online deposit to NAB Coolum Beach BSB 084 620 Account Number 69841 4626. Use your surname/membership as the reference.

2. Post a cheque made out to Whistleblowers Australia Inc with your name to the Secretary, WBA, PO Box 458 Sydney Markets, Sydney, NSW 2129

3. Pay by credit card using PayPal to account name wba@whistleblowers.org.au. Use your surname/membership as the reference.

New members: http://www.bmartin.cc/dissent/contacts/au_wba/membership.html