

*"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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## Articles

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### A whistleblower calls

Brian Martin

Phone rings.

Chris: Hello.

Caller: Is this Whistleblowers Australia?

Chris: Yes it is. This is Chris Nguyen. Can I help you?

Caller: I got your name and number from the web. You're listed as a member of the "national committee." I need some advice. Can I trust you?

Chris: Tell me about your situation and I may be able to suggest some options.

Alex: You can call me Alex. I work for a big company with government contracts. Three months ago I received a message about some dealings that weren't part of my brief. At first I thought I was accidentally included as a blind copy recipient and didn't think anything of it, but the emails continued to arrive and then I thought maybe someone might be intentionally copying me in.

Pause.

Alex: This is big. Really big.

Chris: Go on.

Alex: It involves a big-time corruption.

Alex continues with the story bit by bit for the next five minutes, never mentioning the name of the company or what the contract was all about.

Chris: Uh-huh.

Alex continues for another five minutes.

Chris, interrupting: What would you like to have happen?

Alex, after pausing: This needs to be exposed. But I'm worried about my job.

Chris: Do you have a lot to lose? Could you survive if you lost your job?

Alex: Well, I could, but I'd really like to keep it.

Chris: What have you thought about doing?

Alex: Look, I've read some of your materials. I could report the matter to superiors but that would be career

suicide. I don't trust the company hotline.

Chris thinks, why didn't you tell me before?

Chris: You're right to be wary of making an internal report. And you're being wise to seek advice before speaking out.

Alex: What about going to the media? Do you know any reporters who would take up this story? Ones I could trust?

Chris: What you might do is look at who has broken similar stories, especially journalists with a lot of experience.

Alex: I thought of approaching Lenina Alpha. Do you know her? But I want to remain anonymous.

Chris thinks, why didn't you tell me before?

Chris: She sounds like an excellent choice. Do you know what to do to prevent your identity being exposed?

Alex: I've read about the data retention law. So I don't want to ring her. If she writes a big story, the company will use its connections to get the police to go through all her phone contacts, and that could lead back to me. Even if we encrypt our messages, there's a law that lets the police get access.

Chris: You obviously know a lot about making precautions. Have you thought about ensuring that there are no electronic connections that can be traced to you?

Alex: I thought about getting a burner phone — you know, one that you use and then throw out — but I'm worried that it could still be traced to me. I was hoping that you could pass my material to Lenina.



Chris: Sorry, that's not possible. In Whistleblowers Australia, we can provide information, advice and contacts, but we don't act on anyone's behalf. Could we talk about some other options?

Alex: Sure. Go ahead.

Chris: You might try to meet Lenina face to face. That way there's no way to trace your connection with her electronically.

Alex: That's sensible if I don't mind revealing my identity to her. And I do trust her. But I'm worried that if she knows who I am, she might be put under pressure to reveal my name, you know like being threatened with prison or worse.

Chris: Isn't that unlikely? It's only in big-time national security cases, or organised crime, where you really need to worry.

Alex doesn't respond, so Chris proceeds.

Chris: Getting back to how to contact Lenina, another option is sending her a parcel of printed documents, or even dropping them at her doorstep.

Alex: I thought of that. It's fine for a one-time leak, but what if I have information that needs to get to a target in a timely manner?

Chris: You've just made me think of something. How are you ringing me? Couldn't the police obtain the metadata for this call and use it to track you down? That's assuming they bother with my contacts, which seems unlikely. But if someone leaked really sensitive information, the police might search the metadata of every employee with access to the information. You never know, they might think a call to me was worth following up.

Alex: You don't need to worry. I'm using someone else's phone, someone the police would never suspect, and they don't even know I'm using it. You know when you're at a meeting and someone leaves their phone unattended. That sort of thing. Also, I route the call through a spoofing site so that the metadata doesn't register my number.

Chris: Is that possible? I think you know much more about this than I do.

Alex: In my job, we learn how to take precautions.

Chris: Gee, you know so much that I'm not sure I can offer anything.



Alex: Do you know about the new Identify and Disrupt Bill?<sup>1</sup>

Chris: Yes, I just read about it. It allows the Australian Federal Police, and some other agency whose name I can't remember, to obtain a warrant and to break into someone's computer and to capture the data or even to delete, change or add data. It's frightening. A computer could be someone's mobile phone.

Alex: You probably also know the law makes it possible for people to be served with orders to help break into someone else's computer, for example by stealing it or obtaining a password to get into social media accounts. Anyone served with such an order who refuses to help fully in doing what's demanded could go to prison for ten years — not that I expect that this provision will ever be used.



Chris: Spot on. When I read about this new law, I immediately thought of the implications for whistleblowers. The bill was passed with support from both major parties, which means there's unlikely to be much significant political opposition to using it. The thing about warrants is a joke, because from what I know most requests are rubber-stamped.

Alex: You're right to be worried. Of course the government justified the law by the need to track down and disrupt operations by terrorists and paedophiles. But the law is more general.

Chris: Wow, you're right on top of the latest concerns.

Alex: Imagine this. Imagine that someone working for the AFP, someone involved with Identify and Disrupt operations, was concerned about abuse of police powers to target journalists and whistleblowers trying to expose corruption — in the AFP, let's say. What could they do to help?

Chris, after a pause: The best option would be to stay on the inside and somehow let targets of disruption operations know they are being targeted. Well, I think that might be a good option. I haven't thought about this before.

Alex: It would be good if you did think about it. How are you going to know whether a message from someone who claims to be an AFP insider is genuine? It might be part of the operation, maybe to trigger paranoia and distrust. Have you heard about the FBI's COINTELPRO program back in the 1960s?

Chris: Yes, it was only exposed after activists raided an FBI office — was it in Pennsylvania? — and obtained piles of files about the program.<sup>2</sup> The FBI was forging documents and trying to sow distrust among activist groups like the Black Panthers. You're right, the new law gives the AFP the power to do the same sort of thing, legally.

Alex: Was COINTELPRO legal? Or does it matter whether it was legal? The thing that blew it out of the water was the raid and the subsequent exposure. Now I have a question for you. What would be the equivalent of the Pennsylvania raid today, in relation to the AFP?

Chris: It would be some hacker exposing AFP files on their Identify and Disrupt operations!

Alex: An outside hacker is one possibility.

Chris, taking the prompt: Or it would be an insider. A leaker.

Alex: Think carefully. Who would have the knowledge to know whether such a leak was genuine or was part of a devious disinformation operation?

Chris, after thinking a moment: Maybe someone in Electronic Frontiers Australia, or in one of the other digital rights groups.

Alex: I've got to go. I'll leave that with you. You know the scout motto: be prepared.

Alex hangs up. Chris isn't quite sure what really happened.

Brian Martin is editor of *The Whistle*.

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## You listened to me. And I was scared for you.

Cynthia Kardell

YOU LISTENED TO ME. I thought you were dead. I thought they had killed you. I thought it was my fault.

It was never your fault Carol whispered across the years. She winced: the fear, the sense of imminent peril and the kicking and beating she got were as fresh today as they were in New Zealand nearly 30 years ago. As was the sense of having failed to stop too many children from being abused and trafficked for sex while they were in state care. And here she was, that little girl — now an adult — telling Carol she was sorry for what Carol, had gone through. Saying she always knew how scared Carol was.

Carol O'Connor was only a young graduate in psychotherapy when she sensed something was very wrong with New Zealand's state-based system for the protection of children in care. She also realised pretty quickly that asking lots of questions and wanting things to change didn't endear her to some of her mentors and teachers. But she didn't appreciate the threat they seemed to think she posed to them until ten years later in 1991 when a man broke into her home late one night and pulled her out of bed, brutally kicking and punching her. She still wonders how she had the presence of mind to make out that someone else was in the house, so that

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<sup>1</sup> Surveillance Legislation Amendment (Identify and Disrupt) Bill 2021

<sup>2</sup> Nelson Blackstock, *Cointelpro: The FBI's Secret War on Political Freedom* (New York: Vintage, 1976); Paul Cowan, Nick Egleson and Nat Hentoff, *State Secrets: Police Surveillance in America* (New York: Holt, Rinehart, and Winston, 1974).

he ran off. Carol says the police were great, but they never found out who did it.

In 1995 Carol had 32 false allegations levelled against her. When she realised why, she hired a top lawyer to stop the attack in its tracks. It was a very public affair. So she wasn't surprised when, in the following year, some of the children who she had cared for started coming to her about being trafficked for sex among different adults. They were desperate and desperate to get help.

Carol began to realise why they hadn't got any help after being referred into the child services system, but she couldn't prove that the agencies had been infiltrated. Children were coming to her, saying how they had been taken out of nurseries to groups of adults for sex. If the parents tried to do anything, they were intimidated. Some left town to protect their children. And colleagues too, began sharing what they knew. It was the beginning of internet activity and, looking back, Carol thought there was a lot of money involved.

Carol mustered a group of ten hardy souls to take the issues forward. They gave papers at conferences to raise awareness and to push for a national public inquiry, so that statutory agencies could become aware of the problem and work together to protect children and young people. They approached whoever they thought had a duty to take it on board, like members of parliament, the police, the Children's Commissioner and Child Services. With the support of a child fostering organisation, which knew some of the children, Carol lobbied the responsible minister directly. He set up a task force, but its findings were inconclusive. By 2000, when the minister started bagging them as "that group" and accusing them of wasting everyone's time, Carol knew a national inquiry wasn't going to happen.

Life became even more threatening: she realised that she was being tailed. She expected another beating at every turn. They let her know she was being tailed. They wanted her to be scared and she was. Then, when a story was splashed across all the papers discrediting a colleague for helping two of the children eight years earlier when they both gave evidence in court, she knew she had to get out.

With her mother's help, in 2004 Carol left to live in Scotland, where she remains. She has kept a diary as she has never really stopped looking over her shoulder. Carol thinks she understands what a refugee means when they say they had to flee for fear of their life.

After she left, Carol kept an eye on ongoing developments. Others have tried to raise concerns but until recently their entreaties continued to fall on deaf ears. Then in 2018, New Zealand's Prime Minister Jacinda Ardern established a royal commission into Oranga Tamariki, formerly the Ministry for Children, which has ultimate responsibility for the decisions taken by police, in courts, hospitals and by others about the children in their care.



The inquiry is the result of a well organised group called ActionStation, which Carol thinks has just the structure to deal with a highly organised underground group of abusers and traffickers, because it organises around particular issues. And they have a strong multicultural base, which the government could not ignore, as it was mostly Maori and Pacific Island children in care who were abused. Carol is disappointed it excludes incidents of abuse occurring after 2000, but recognises it is a start. You can find it by googling Child Abuse Inquiry, NZ. It takes live testimony online and will run for five years, until 2023 when a report is due.



And then out of the blue Carol received a letter from one of those who as a young child had been abused all those years ago, a letter about wanting to get in touch. I can't imagine the relief it must be, to know how much it meant then and now, that Carol was trying to help. And that she realised Carol too was at risk in speaking up for her. Carol is embarrassed to know the letter-writer had been worrying about causing her, Carol, grief when all Carol felt she was doing was what any person in her position should've been doing. But many don't, that's the thing. I hope there's a time ahead when both women can share what they know and make peace with their past.

Carol's story reminds me of a similar story that played out in Sydney and Wollongong, in the 1990s. Jean Lennane attracted a lot of public attention in the early 1990s after being sacked for blowing the whistle on the government's plans to move mentally ill patients from state institutions into community homes, without putting adequate accommodation in place first. Jean warned most would end up on the street or in gaol. She became a magnet for the used and abused that no one wanted to believe. Initially they were the children and young adults who worked "The Wall" on Darlinghurst Road. During the day it was and still is this lovely sandstone wall, part of the old gaol built in the early 1820s. It's now the National Art School. But at night back then, it became the place where young street kids hung out to ply their trade.



Jean Lennane

Jean told me some were just desperate young kids living on the street. They were being picked up in classy black limousines and sometimes for group sex parties with well-connected men about town. The boys said the men were some of our senior politicians, judges, lawyers, doctors, police officers and a mayor or two. It was widely known in certain circles but not beyond. It was something that would eventually be blown apart by the NSW Wood Royal Commission into police corruption, which ran for several years from 1995. (It turned out to be an unusual commission, with a fire in its belly for reform.)

Others soon followed in approaching Jean. Many were with their carers or parents. They came from every walk of life. The recurring themes were child sexual abuse and paedophile networks operating like protection rackets. Jean realised she needed a vehicle to take the issue forward, so she established the Australian Child Protection Alliance or ACPA. A core group developed around Whistleblowers Australia members Lesley Pinson and Alastair Gaisford and parents Sue and Chris Dale and Karlene Jones. They organised meetings with all the relevant movers and shakers and staged candlelit vigils outside Parliament, vigils which were well supported by the victims and their parents and carers. Jean reached out to state Labor parliamentarians Franca Arena and Deirdre Grusovin, former detective Ted Bassingthwaighe who investigated sexual assault and two journalists who were willing to cover the stories as the victims took to the witness stand.

Together they got the street kids and others to write up their stories, so they could be gathered together in a box and ultimately tabled in the NSW Parliament by Franca Arena. Franca warned at least two MPs, a judge, several senior police officers, lawyers, doctors, a socialite businessman and a priest would be exposed in the Wood commission starting the following day.

Franca ultimately lost her job, but by then it was a done deal, with paedophilia-related corruption added to the Wood Royal Commission's terms of reference. One of the first witnesses, a Justice Yeldham, suicided the day before he was due to give evidence. He'd been bribed by corrupt police for years after being found regularly

wanking in the stairwell at Central Railway Station. Another judge quietly retired after allegations were made public. One of the mayors was later murdered by two of the boys. I think they are still in prison. The NSW Police established a Child Protection Unit to prosecute the claims in the documents that Jean and her colleagues had gathered. Subsequently many of those who had abused school children and the street boys were quietly sent to jail. Each time Jean would ring to tell me that another was going down. She'd remind me that the fact that there was so little press coverage of the convictions — just a short two paragraphs — told her the people at the top were still protecting their own.

And some were very well placed to do that as paedophile networks had apparently also linked providers in Thailand and Indonesia with officials in the Department of Foreign Affairs and Trade (DFAT), who were willing to issue temporary visas to bring street kids in from overseas. Former diplomat Alastair Gaisford fought out his battle with DFAT over his claims in the national press for well over a decade. His work helped to put a number of paedophiles in gaol, including Robert (Dolly) Dunn, his accomplice Brian Wain, and Bill Brown, who hung himself the day after starting his sentence.

Lots of nasty, violent things happened at the time, but it took until 2013 and a number of other state inquiries across the nation for people to take state-sponsored child abuse seriously. We had to wait until society realised it was happening to all sorts of children, not just street boys. In 2013 the Gillard federal government established a national inquiry into institutional responses to child sex abuse. It ran for 5 years until 2019 and is still ongoing in the sense that society is having to come to grips with a steady stream of revelations, as claims are settled or go on to trial, and the idea that most of the abuse — even back then — happened in the home.

#### Further reading

Franca Arena's speech:

<https://bit.ly/3kEQrad>

Brian Martin, "Wollongong: horror behind the scenes,"

<https://wp.me/p4C5LE-oP>: some of Wollongong's most prominent

figures were involved in sexually abusing boys.

Cynthia Kardell is president of Whistleblowers Australia.

#### Whistleblowers Action Group Queensland (QWAG)



#### 2020 awards for Whistleblower of the Year and Whistleblower Supporter of the Year

#### Whistleblower of the Year Award for 2020



The Military Police [Australian Defence Force Investigative Service, ADFIS] appears to be the only Defence body that challenged the wilful blindness allegedly being shown by a "battle command" culture within the national chain of command in Defence, towards the continuing stream of information coming to all nodes on that national command chain disclosing contentious killings of civilians in Afghanistan. Military Police disclosed the alleged obstruction being imposed upon their investigations:

Firstly, imposed by commanders, their legal officers and their staff, by denying the Military Police access to sites, to witnesses, to documents, and to weapons used, when soldiers under command and control of these commissioned officers may have been unlawfully killing Afghani civilians and Taliban already under control;

Secondly, imposed by principals in Defence, by denying a Chief of Defence Force Commission of Inquiry that the Military Police requested, by denying the Inquiry that the Defence Minister directed the Office of Inspector General ADF to conduct into Military Police investigations. These denial decisions may have occurred when these principals may have failed to have taken all necessary and reasonable measures to prevent or repress the commission of possible war crimes and unlawful actions in Afghanistan and in Timor; and, Thirdly, by the Office of Inspector General ADF's Inquiry into War Crime Allegations, by denying again the inquiry previously refused by the Chief of Defence Force, and the inquiry not conducted or reported by the Office of the Inspector General when an inquiry was directed by the Defence Minister. These denial decisions may have occurred during a defence response to War Crime allegations, including a purported inquiry process, that may appear to have been unwilling to inquire into any alleged failures by the top echelons of the Defence chain to exercise necessary and reasonable measures to prevent or repress the commission of possible war crimes and unlawful actions in Afghanistan.

For these sole efforts, the Military Police were reviled by commissioned officers of middle and senior rank, in what has been described as a "war" against ADFIS. As is typical, in the Group's experience of investigations into whistleblower disclosures purportedly carried out by the Office of Inspector General ADF, the disclosures may not have been properly, fairly and thoroughly investigated, and the whistleblowers, the Military Police, may have now been blamed by the Inspector General for the failure of Defence to discover any possible war crimes and/or for the cover-up of possible war crimes in Afghanistan.

QWAG also commends the courageous actions by individual legal officers, members of Special Forces and Afghani interpreters, and a padre with bullet holes in his hat, who also acted to disclose allegedly unlawful actions of those operating "inside the wire" and "outside the wire" in Afghanistan.

## The Whistleblower Supporter of the Year Award for 2020

This Award has been given to **Dr Samantha Crompvoets** for her continuing support of those in Defence and/or those affected by Defence whose mistreatment and detriments have yet to be addressed by any fair, proper and thorough inquiry. Dr Crompvoets has highlighted Reservists and Public Servants working in Defence as those on this queue of those suffering the abuse and unfairness of impositions by Defence. Others on the queue include those civilian populations who were not told for years that Defence was releasing serious chemical pollutants into groundwater supplies and catchment pools, and taxpayers funding the procurement system where the previous separation of management from military commanders has now been broken. Those who have recently left the queue, happily, are those families now entitled to go to a Royal Commission, where the treatment of Defence members has been so cruel and brutal, or so derelict of concern for a damaged comrade, that the members have committed suicide or suffered related harms.



Samantha Crompvoets

Dr Crompvoets' support is so valuable because she has a voice in the media and in the public domain regarding Defence that those in Defence and in Defence-related civilian organisations do not have. QWAG took the wage theft allegations imposed on Defence Reservists to the "Bushfire" Royal Commission, but the Commissioners refused to publish the submission while the Royal Commission was in hearings. It was published three weeks after hearings closed, without informing

QWAG. We have calculated the remuneration losses for one service person with more than forty years in permanent and reservist roles — that person received a half pay salary, no leave and no superannuation, while serving in the Reserves, at a financial loss well in excess of \$1million. Dr Crompvoets' academic research into the rationale for treatment of reservists brings independence and scholarship to the issue as to whether Reservists have a just complaint, a complaint which Defence portrays as "disloyalty, serving only for money."

QWAG, with its two awards, has sought to recognize both the integrity and the courage of whistleblowers, and also the contribution of persons whose actions have been of outstanding assistance to improving the circumstances for whistleblowers in this State.

This is the twenty-eighth year that QWAG has made its awards to deserving persons. Previous recipients of the Whistleblower of the Year Award with a Defence background include:

- Mr Nathan Moore (2004) for disclosing the pain experienced in living the harm brought to whistleblowers through the victimization practised by Defence organizations.
- Major Harry Smith (2010) for the example shown to commanders in the Defence Force about the obligation to support men and women who have served their country in time of war.

Previous recipients of the Award of Whistleblower Supporter of the Year whose support assisted Defence members and persons assisting proper treatment of Defence issues, include:

- In 2010, Julian Assange was recognized for his Wikileaks systems for bringing powerful organisations, including military forces, to account for the abuse of their powers.
- In 2019, former army officer Andrew Wilkie MP received the Supporter Award for opposing the weight of secrecy being imposed by the Federal Government on its own wrongdoing, including the Government's persecution of whistleblowers such as Julian Assange and the ABC whistleblowers and journalists disclosing about the exploitation of East Timor and the killing of Afghani citizens.

### **Babita Deokaran was a guardian of public accountability — her assassination is a descent into the abyss of chaos**

Farouk Araie, letter to the editor of the *Daily Maverick*, 29 August 2021



*A candlelight vigil for corruption fighter Babita Deokaran at the Office of the Premier on 26 August 2021 in Johannesburg. (Photo: Gallo Images / Fani Mahuntsi)*

**It is sad and tragic that we treat whistle-blowers as pariahs for their moral courage. These are the consequences of a lawless society. Endemic and brazen corruption has been the pivotal figure contributing to the underdevelopment of the country and the growth of abject poverty, writes reader Farouk Araie.**

A BRAVE WOMAN was laid to rest in Phoenix, KwaZulu-Natal, shot 12 times because of her honesty in uncovering corruption.

The brutal and tragic killing of Babita Deokaran is an act of savagery that must be condemned by the nation and its law-abiding citizens. If the government does not protect whistle-blowers and their identities, murderous assaults like these will become common.

Our march against corruption stumbles on flawed law execution. The NPA [National Prosecuting Authority of South Africa] needs to extend every possible protection to whistle-blowers as theirs is an altruistic act. The protection of whistle-blowers is a necessary element of a coherent strategy to combat corruption, which includes other measures to create an ethical culture in the public and financial sectors.

Babita Deokaran was a guardian of public accountability. Sadly, she paid the ultimate price for attempting to expose rampant corruption. An extremely brave soul who unearthed corruption in the top echelons of power. A concerned individual who demonstrated exemplary courage at tremendous risk to her life and reputation. Does this mean that whistle-blowers are ploughing a lonely furrow in our violent country with barely any protection?

A recent plea by Deputy Chief Justice Raymond Zondo for whistle-blowers to be protected must be taken seriously if we are to contain, let alone defeat, monumental corruption in our greed-infested democracy. The Public Disclosures Act (No 26 of 2000) makes provision for whistle-blowers to be protected from occupational detriment.

Corruption is more deadly than Covid-19, more infectious than HIV, more contagious than TB and more ferocious than cancer. It has thus far over the past 25 years cost this impoverished country R2-trillion in embezzled and looted money.

Public officials are most likely to detect wrongdoing in the workplace such as fraud, misconduct or corruption. However, experience shows that when a so-called whistle-blower reports such cases they may suffer various forms of retaliation. The protection of whistle-blowers is therefore an integral tool in an integrity framework to prevent and combat corruption. In the struggle for transparency and accountability, whistle-blowers play an invaluable role.

What we are witnessing graphically in 3D is a logical descent into the abyss of chaos. It is indeed sad and tragic that we treat whistle-blowers as pariahs for their moral courage. These are the consequences of a lawless society. Endemic and brazen corruption has been the pivotal figure contributing to the underdevelopment of the country and the growth of abject poverty.

Systemic corruption within the corridors of power and influence could be an ineradicable feature of our grotesquely imbalanced society. Usurpers and their looters-in-arms at all levels acquired a nuclear-level audacity to steal billions without facing consequences.

Three critical factors are at play in this deadly scenario. First is a lack of self-control with money. Second, is a lack of a sense of shame about the repercussions of detection. Third is that theft by stealth and denial pays handsomely in lawless South Africa at no cost to the perpetrators and their thieves-in-arms.

Tragically, there is a desperate dearth of honourable, courageous, patriotic men and women to do their enforcement duties no matter how powerful the violator is. It must be noted that the values of the elite constitute the dominant values that drive wider society's values. Our society will never develop as long as greed and wasteful, conspicuous consumption of our scarce wealth is brazenly and illegally acquired.

The current expanding menace has eaten deep into the very foundation of our democracy and hardly anyone is immune to it. By brazenly killing whistle-blowers, we resemble Colombia in the 1980s and 1990s under the control of the drug lords of Medellín and Cali.

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### **In praise of whistleblowers**

Chuck Stephens  
*BizNews*, 27 August 2021

THINK Aleksandr Solzhenitsyn. His memory is so faded now that even my spell-checker can't help me. But he must be the patron saint of whistleblowers, from the Gulag Archipelago. An archipelago is a chain of islands caused by conflicting ocean currents usually at the mouth of a river where fresh water flows into the sea. There is this clash of waters from two directions — one salty, one fresh — and the chain of islands that he wrote about were detention camps across Siberia. He got to know them by being there.

His incredible memory allowed him during his periods of relative freedom to record the stories of those who were detained in the camps with him. His stories leaked out of the Soviet Union during the Cold War. According to the *New York Times*, his "stubborn, lonely and combative literary struggles gained

the force of prophecy as he revealed the heavy afflictions of Soviet Communism in some of the most powerful works of the 20th century.” He won a Nobel Prize for Literature in 1970, long before the Berlin Wall collapsed. He deserves some of the credit for the collapse of that regime.

He was a victim of a cruel system — telling his own story — and recording the stories of other victims. He was a whistleblower par excellence. He became a “defector.” This is a special, premiere class of whistleblower. Defectors actually escape the horrors of the system that they expose, as happened recently when an athlete from Belarus defected to the Ukraine during the 2021 Olympic Games. This is still going on, even though the Cold War is over.

One defector of note was Fezekile Ntsukela Kuzwayo — better known as Khwezi [who accused South African president Jacob Zuma of raping her]. She defected to Holland to escape the wrath of Jacob Zuma and his protégés. While in the Netherlands, she wrote an extremely powerful poem that she showcased called “I am Khanga.” It is therapeutic for victims to tell their stories. Keeping it in can be hazardous to your health. But I digress.

Whistle-blowing and defecting took a new turn with Watergate. Up until then, the good guys and the bad guys were always dressed in white and black — and easy to keep track of. Suddenly a President was the bad guy, and “deep-throat” was the good guy — brought to you by investigative journalists, the new heroes. “Deep-throat” is a cynical name for whistleblowers who have to remain anonymous. They are not cowards, they are realists. They contact the media and NGOs. That’s what Babita Deokaran did. She contacted the Helen Suzman Foundation and alerted them to the danger that she was in for reporting corruption involving Covid-19 funding. That is the last step before defection, but she waited too long. The system closed in on her.

We long to hear that the police are investigating her murder. That takes us back to the good old days of the Cold War, when the police were good and the criminal syndicates and the KGB (read: SSA) were bad [SSA: State Security Agency of South Africa]. Sorry to disillusion you folks, but these days, her murder could well have been carried

out by the police or SSA operatives. Remember that we live in the era when civil unrest can be instigated by factions of political parties, on a scale that boggles the mind. The other faction even calls it “insurrection.”

This is not a conflict between two political parties, as in civil war. This is in-fighting between two factions of one political party. Because for all intents and purposes we live in a one-party state. The god-child of Communism. The other parties have no hope of ever defeating the ruling party, they are simply decoys to make people believe that there is Democracy. When the ruling party is more powerful than the State, wake up and smell the bacon. Democracy is an illusion, and the police and the SSA can and will be used to silence opposition. In this context, whistle-blowing is as risky as it was for Solzhenitsyn.

South Africa’s investigative journalists cannot go unmentioned. There are many, but a few come to mind. Jacques Pauw wrote *The President’s Keepers*, echoing the famous book about Watergate — *All the President’s Men*. In this book he exposed the extent of State Capture under Jacob Zuma. Only the Zondo Commission has out-done him in this respect. Pieter-Louis Myburgh wrote *The Gangster State*, about Ace Magashule.

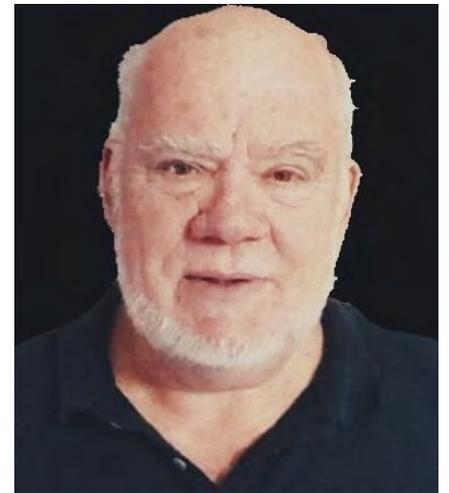
So far, no one has dared to publish a book exposing the extent of David Mabuza’s indiscretions, because his rise to Deputy President was a chilling reminder of reality. In 2011, our NGO ran a poster campaign in Mpumalanga. The poster had a photo of Jimmy Mohlala, one of those who lost his life in the January Murders between 1998 and 2011. There were seventeen in all who were shot over that period, fourteen of whom died. There was an investigation in 2011 — its report is still under wraps.

In July 2021, Mabuza is in a trial prosecuted by Fred Daniel, who has sued his Mpumalanga government for R1 billion. The trial has been allocated 37 days by the Pretoria High Court. So in tandem to Zuma and Magashule, who are currently tangled in court cases, Mabuza is also getting his day in court — although by private prosecution.

I am a whistleblower from Mpumalanga. I know the ways of State-induced injustice. My life is in constant danger.

In June, I was arrested. Two months and three court appearances later, I have still not seen the charge sheet. That was incidental. The thing is, they already had 13 men detained in the White River jail, several of them exhibiting Covid symptoms. The police knew this, because these Mozambican border-jumpers had been detained for over a month in the jail. What an opportunity!

They arrested me on a Friday afternoon. The law says that a detainee must be heard within 48 hours, but on a weekend this gets extended by a third night. They refused to take a statement from me. They just threw me in jail for three days and nights. I caught Covid. I am 70 years old — go figure the risks and probabilities. I have a Covid-positive test to prove it. But I survived this attempt on my life. Brought to you by the police and the instigators. The same weekend that I spent in jail, President Ramaphosa raised the Alert Level from 3 to 4 because the third wave of Covid was upon us. The police did not miss their chance to take me out. If it was not intentional, it was certainly reckless. Attempted murder, by law. But the authorities close ranks to protect one another. Think Aleksandr Solzhenitsyn.



Chuck Stephens

Chuck Stephens works at the Desmond Tutu Centre for Leadership. He has written this article in his own capacity.

## Action can dignify this tribute to Babita Deokaran, and whistleblowers everywhere

John Gi Clarke

*Mail & Guardian*, 18 September 2021



Power vs truth: Former President Nelson Mandela (left) with Bantu Holomisa. The author writes that the African National Congress's expulsion of Holomisa in 1996 was the inflection point that started the party's long downward slide. (Beeld)

I AM a social worker in private practice who has found myself providing psychosocial counselling and support to whistleblowers. Together with other members of the South African Association for Social Workers in Private Practice, we are developing a specialisation to support whistleblowers.

In my practice I have counselled whistleblowers who need a safe, confidential place that can be an open space for them to share their stories and clarify their options on how best to ensure truth and justice prevails.

The key lesson I have learned from them is that our long walk to freedom will only become longer unless we face up to the truth and integrate it into our stories.

I was not fortunate enough to have known Babita Deokaran personally. I wish I had. But I have been fortunate to know and listen to the stories of many other whistleblowers, including all those who testified at the Zondo commission into state capture — Cynthia Stimpel, Martha Ngoye, Tiro Holele, Themba Maseko, Mosilo Mothepu, Thandeka Gqubule-Mbeki, Bianca Goodson and Angelo Agrizzi, and those who applied to, but never got the chance, like whistleblower Aris Danikas who had to flee the country to seek refuge in Greece because of the

evidence he had of police atrocities committed by the now-disbanded Cato Manor specialised crime unit in 2008.

This tribute honours all these amazing souls.

This quote from Ben Okri, the great Nigerian-born poet and storyteller, never fails to encourage them to be resilient: “Stories are the secret reservoir of values. Change the stories individuals and nations live by and tell themselves and you change the individuals and nations. If they tell themselves stories that are lies, they will suffer the future consequences of those lies. If they tell themselves stories that face their own truth, they will free their histories for future flowerings.”

They attest to some flowering in their individual lives. However the flowering of the nation still eludes because those with power and privilege have not faced their own truth.

What will it take for South Africa's future to flower?

Looking at photos of Deokaran, I notice that she had a pronounced bindi on the ajna or brow chakra. As I understand Hindu faith, it symbolises higher consciousness of truth, deeper than most ordinary people seem to grasp.

I wish I had more of that as a social worker. All I can rely on is a sixth sense that we call practice intuition. With 40 years of professional practice, I have learned to pay attention to it.

So, what is my practice intuition telling me now?

First, to keep writing. Intuition comes from a place that is pre-verbal and hard to articulate. One feels it in the gut. The act of writing helps to clarify it. Two months ago, after listening to the stories of four whistleblowers facing an ongoing strategic litigation on whistleblowers action, I felt the urge to write something and put it in the public space. The article was published by the *Mail & Guardian's* Thought Leader site. The title proved to be chillingly ironic: “Whistleblowing counters the corrupting tendency of power, but whistleblowers are left vulnerable and at risk”.

Hopefully Deokaran's murder will result in more people in power reading and acting on it.



Premature victory: Tlholo Phakoe (left) celebrates in Rustenburg after former mayor Matthew Wolmarans and his co-accused Enoch Matshaba were found guilty of murdering his father, whistleblower Moss Phakoe (on the poster). However, the pair successfully challenged their conviction in 2013. (Herman Verwey/Gallo Images/City Press)

### How do we make sense of Deokaran's death?

Hindsight is an exact science. Social workers work with our clients so that they may gain insight from hindsight.

In situations where conflicts have turned violent, I find it helpful to use my imagination and do what Marty McFly and Doc Brown did in the *Back to the Future* movies and imagine travelling back in time to an inflection point that was the start of a trend that has now culminated in violence in the present. I look for a moment when truth clashed with power.

When did the trend start? What date would I set in the dial of an imaginary time machine so that I could “go back to the future” and try to change the course of history?

The date would be 25 years ago, in September 1996, which was a few months after General Bantu Holomisa had testified at the Truth and Reconciliation Commission (TRC) that a fellow cabinet minister, Princess Stella Sigcau, had accepted a bribe of R50 000 in 1987 to shut her up about the R2-million bribe that Sol Kerzner had paid to Chief George Matanzima to get gambling rights from the Transkei bantustan for his gambling empire. President Nelson Mandela and the African National Congress (ANC) leadership were deciding what to do. On 30 September 1996 they decided to expel Holomisa. It was a bad decision that has had serious consequences.

Madiba was perplexed by the decision but had his reasons for supporting it. The ANC disciplinary committee said Holomisa's offence was his failure to report the matter internally within

ANC structures before going public. Notwithstanding that, Sigcau suffered no consequences other than bringing disgrace to the amaMpondo royal family and ultimately weakening the ANC's legitimacy.

In whistleblower Themba Maseko's recent book *For My Country* he explains how, when he was director general of the department of public works, his own relationship with Sigcau, who was his political head, deteriorated to the point of becoming untenable.

"I sought an audience with [then-president Thabo] Mbeki to seek his intervention. He undertook to look into the matter and meet with the minister as soon as possible, but I never heard back from him. I suspect Sigcau somehow got to know of my meeting with Mbeki, since our relationship deteriorated even further. She cancelled all our weekly meetings and declined all my requests for meetings."



Gunned down: Ex ANC MP Andrew Feinstein told the author, "We must never forget the sacrifice made by Babita in her quest for 'accountable governance' and demand that 'the ... powerful people who ordered her assassination suffer the full consequences of their ... actions'." (Fani Mahuntsi/Gallo Images/Getty Images)

By definition a whistleblower is somebody who reveals wrongdoing. I believe Holomisa's expulsion was the inflection point that started the ANC's long downward slide. That was when the ANC ceased to be a leading force in

the liberation movement and became just another political party that cared more about power and privilege than justice and truth. Twenty-five years on the party has brought the country to tremble on the edge of becoming a failed state. Had a culture of truth-telling been nurtured within the ANC, and Sigcau sanctioned instead of the truth-teller being expelled, perhaps Babita Deokaran, Moss Phakoe, Jimmy Mohlala and other whistleblowers would still be alive today.

It wasn't long after Holomisa's expulsion that the ANC sold its soul to the arms dealers by accepting bribes and funding for the ANC's election campaign in the 1999 general election. We only know about that because, as Andrew Feinstein explains in this conversation *Leaking and Speaking Truth to Power*, two fellow ANC MPs blew the whistle by reporting to him in strict confidence what they had discovered. Feinstein was the ranking member of the ANC in parliament's special committee on public accounts (Scopa). He insisted on an unfettered inquiry, but Mbeki blocked that from happening. Feinstein explains that he wasn't the whistleblower. He was simply the medium of a message that the ANC had effectively been captured by international arms dealers.

If Holomisa's sin was going outside the party to make his disclosures, here was an instance of loyal ANC members speaking truth *within* power, by blowing the whistle to Scopa via Feinstein. Their identities have never been disclosed, but we all know what happened to Feinstein. He became a conscientious objector against the way the ANC was handling the scandal and before he could be expelled he resigned as an ANC MP.

That was the end of his political career, as he narrates in his book *After the Party*. He left the country where he continues to speak truth to power. His second book *Shadow World: Inside the Global Arms Trade* probes the deeper truths about how the international arms trade thrives on sustained and systemic corruption. It has been made into a documentary film earning him a listing among the 100 most influential people in the world working in armed violence reduction by Action on Armed Violence.

Feinstein sent me this message of solidarity to share.

"We must never forget the sacrifice made by Babita in her quest for honest, accountable governance in our beloved country. We must demand that the corrupt, powerful people who ordered her assassination suffer the full consequences of their murderous actions. And while we hope that Babita rests in power and in peace, we must thank her and all whistleblowers for their sacrifice as we redouble our determination to drive corruption, deceit and injustice from our democracy."

Note he said, "our beloved country". He might not live in South Africa but South Africa still lives in him, and he is committed to supporting whistleblowers in any way he can.

The news that former president Jacob Zuma, serving a sentence for contempt of court, has been released from prison on medical parole, caused me to reflect on how much damage he did to the country. I am sure his health is indeed poor. But more to the point is that the whole nation is still suffering a chronic degenerative illness as a direct consequence of the ANC telling itself, and the nation, stories that are lies.

"After all, there is such a thing as truth," Feinstein quotes Victor Serge from his book *The Case of Comrade Tulayev*.

I recently finished watching the documentary *Shadow World*.

One of the voices of reason and hope who features in the documentary is the Pulitzer Prize-winning journalist Chris Hedges. He is a former war correspondent for the *New York Times*, a public theologian and author of several books. Like Holomisa he also found himself in trouble with his employer for speaking his truth and was disciplined by the *New York Times*, which forbade him from speaking about the Iraq War, which he believed was a great folly. He chose to resign.

Hedges makes three points that I found extremely consoling and encouraging.

He quotes the French intellectual Julian Benda, who says in his book *The Treason of Intellectuals* that: "The more you make compromises with those who serve privilege and power, the more you diminish the capacity for justice and truth."

We need to be rebels with a cause, the cause of truth. But our rebellion will only be effective if, after having named and unmasked the powers, we strategically engage the powers, as another public theologian, Walter Wink, wrote. That is what whistleblowing is about.

However, to sustain that, whistleblowers need hope.

Hedges quotes Augustine of Hippo, the great African bishop.

“Hope has two beautiful daughters. Their names are anger and courage; anger at the way things are, and courage to see that they do not remain the way they are.”

Listening to whistleblowers, I am hopeful for the future because they have given birth afresh to these two daughters. However, Brené Brown, a fellow social worker, cautions that “anger is a great catalyst for action but a very poor lifetime companion”. How can courage be sustained, other than by allowing anger to consume us?

Hedges explains that the only way we can sustain ourselves in this quest for justice and truth is to allow love to take hold of us. Love not in the sentimental and romantic sense, but the true love that sustained Martin Luther King Jr and every other speaker of truth to power who has managed to have a lasting impact.

What does engaging the powers mean for us as South Africa trembles on the edge of the abyss of becoming a failed state?



Murdered: Former Mbombela speaker Jimmy Mohlala (pictured) and provincial official Samuel Mpatlanyane were killed in 2009 after they tried to expose collusion in the building of the Mbombela stadium

After a recent ANC lekgotla, it was reported that President Cyril Ramaphosa warned the party to be “armed and ready” in anticipation of a scathing indictment of the party in the report of

the Zondo commission on state capture when it is released next month. He said the party must prepare its messaging to counter perceptions that his government is corrupt.

Whatever blame the commission will apportion to his predecessor’s government, Ramaphosa cannot escape scrutiny for the Covid-19 scandals. It was on his watch that Babita Deokaran was killed.

Besides ensuring that Deokaran’s killers and the masterminds behind them are brought to justice, the most powerful message he could send to the nation is that he has himself become a whistleblower, in the sense of a referee blowing the whistle on foul play.

That would mean allowing anger and courage to be born anew in him.

Recalling Ben Okri’s words about facing and owning one’s truth, Ramaphosa needs to start handing out yellow and red cards to all members of his cabinet who deserve it. He is going to have some vacancies to fill.

But engaging the powers also means promoting restorative justice.

To make good the deep 25-year-long betrayal of constitutional values, imagine what a wonderful symbolic gesture it would be for Ramaphosa to reopen the substance of the TRC and reappoint Holomisa to his cabinet. It would show that he is in fact serious about promoting a new culture of whistleblowing.

I believe that the time has again come for Ramaphosa to invite all parties into another Codesa-type process to again create a government of national unity, with people of integrity from all parties who cherish truth and justice over power and privilege.

That is how I hope we can make meaning from Deokaran’s death, and help her 16-old-daughter accept that her mother did not die in vain.

History does not need to continue as an endless tug of war between power and liberty, because liberty means nothing unless it is conjoined with truth. True liberation starts with facing and emancipating the deep truths within us — however embarrassing they may be — not perpetuating lies. It means allowing that truth to be born in our hearts, flow through our veins and rejuvenate our hope for the future. I am convinced we will never know and realise the aspirations in our preamble to the constitution (that Ramaphosa helped to

script) of building a democratic society unless the injustices of the past 25 years that started with the expulsion of a whistleblower are also recognised.

Power can only be constrained by the intertwining of truth and liberty. Only when whistleblowers are celebrated rather than murdered will we be able to say with Martin Luther King Jr: “Free at last. Free at last. Thank God Almighty, free at last”.

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## Major study busts the myth of the “vengeful whistleblower”

Mark Worth

*Whistleblower Network News*

23 August 2021



ONE OF THE MAIN REASONS companies and governments oppose whistleblower systems is the fear they could be abused by angry or vengeful employees. A major report dispels this belief.

A miniscule 4 percent of 700 German companies surveyed by KPMG said they had received deliberately false reports from their employees, or reports motivated by revenge. Depending on the size of the company, only 2–6 percent said they received hoaxes, 2–5 percent received vengeful reports, and just 1–3 percent received joke reports. Ninety percent of companies told KPMG they had received no malicious reports whatsoever.

These important findings are presented in KPMG’s report, “Bringing Light into the Darkness: White-Collar Crime in Germany.”

At conferences, public hearings and policy briefings around the world, company executives and public officials routinely complain that setting up internal whistleblower channels would invite employees to file vindictive and phony reports. As a result, they contend, their reputations would be damaged by bogus allegations. In Germany, where most workers are required to sign confidentiality agree-

ments and loyalty oaths, industry groups have stridently cautioned the Bundestag against expanding free speech rights for company employees. The KPMG report punctures these anti-whistleblower sentiments.

One of Europe's top whistleblower policy experts said the report confirms what he and most of his colleagues already have long known.

"There is no evidence that whistleblower channels generate any significant number of malicious reports," said Theo Nyrreröd, an associated researcher with the Stockholm Institute of Transition Economics. "There are few incentives for people to engage in such reporting through these channels, which actually can be designed to disincentivize malicious reports. The results of the KPMG study should come as no surprise."

In keeping with the false impression that most whistleblowers are instigators, KPMG found nearly one-fourth of companies in Germany haven't set up a whistleblower system because they fear nurturing a "culture of denunciation."

At the same time, many companies recognize that witnesses in the workplace can be helpful. Nearly one-fifth of companies with a whistleblower system in place said they had discovered a crime only because of a tip-off. "It can therefore be assumed," KPMG wrote, "that a whistleblower system will sooner or later play a major role in the detection and investigation of white-collar crime." KPMG further urged companies — four-fifths of which said Germany faces a "high" or "very high" risk of white-collar crime — to "strive to create acceptance" for whistleblowing.

Perhaps the most remarkable finding is that not a single company KPMG surveyed said it did not need a whistleblower system.

The report also dismisses the argument that whistleblower systems do not work. "In many cases," KPMG wrote, "a timely tip-off can ultimately make a substantial contribution to mitigating damage, even if this sometimes initially entails seemingly negative consequences for the company or for individuals."

## The whistleblowing farce

Michael Falzon

*Malta Today*, 14 September 2021

Where does this leave the Whistleblowers Act? Just as I predicted, it has turned out to be a piece of useless legislation that does not justify the political hype.



Anthony Debono (left) with his wife, former Gozo minister Giovanna Debono

When the first draft of the Whistleblowers Act was published well over ten years ago, I predicted it will prove to be a useless piece of legislation, particularly in the Maltese environment. The Gonzi administration was accused of dragging its feet about the proposed law and finally the law was enacted very soon after the first Muscat administration assumed power.

The thrust of the law is to give protection to employees who report illegalities or wrongdoing being carried out by their employers or by other employees, and it applies to both the public and private sector.

As far as I know, this law was applied only once since its enactment: in the case where the husband of the former Minister for Gozo [an island in the Maltese archipelago], Giovanna Debono, was accused of abusing his position. In this case, it was obvious — from the very idea of the whistleblower status being granted to a Gozitan contractor [Gozitan means relating to the island Gozo] — that the motivation of a genuine whistleblower is expected to be quite different from that of the contractor who claimed he had accepted to carry out allegedly abusive works, and ended up without being paid for his services.

Debono was eventually not found guilty by the Magistrates Court — a decision that was recently confirmed by the Appeals Courts.

Without entering into the merits of the Debono case, there is no doubt that

the so-called whistleblower had personal motives and interests in this case.

Where does this leave the Whistleblowers Act? Just as I predicted, it has turned out to be a piece of useless legislation that does not justify the political hype — from both the PN and the PL [Nationalist Party and Labour Party] — with which it was put on the statute book.

On paper, whistleblowers are courageous people who are given the right to be protected from disciplinary action, retribution, discrimination and court action. The Gozitan contractor was certainly not one of these people. His respect for good and honest governance hardly played any part in his decision to take the advice of whoever told him to claim whistleblower status.

Yet, to date, this was the only case in which the Whistleblower Act was resorted to.

As I always insisted, in practice, any whistleblower in the private sector in Malta would be doomed to be unemployed for the rest of his or her life. Employees in the public sector would hardly fare any better — they would be permanently considered as a nuisance by the rest of the civil service.

Genuine whistleblowers are nowhere to be seen in Malta, because people prefer to do their thing protected with the veil of anonymity, rather than by law.

The real whistleblowing that goes on in Malta is called leaks to the press with which one can now add leaks to the bloggers and news sites who try — not so successfully — to replicate Daphne Caruana Galizia's Running Commentary.

This is a small island where everybody knows everybody else, where too many people are related to each other and people act as these circumstances allow them. That is why much of the issues that led to the FATF greylisting will raise the hackles of a lot of people when stricter rules and laws will be imposed. [FATF is the Financial Action Task Force. Countries on the grey list are subject to increased monitoring for money laundering and terrorism.]

If I am reading the situation correctly, it seems that Robert Abela's administration will currently push for the assuaging FATF concerns in cases

that do not have any negative political impact on the government's popularity.

The case of former PN Minister and EU Commissioner, John Dalli, is a case in point. After so many years, the police have now filed a criminal case against him over allegations that he solicited a €60 million bribe from a private company. Dalli denies all accusations.

Other steps that would harm the PL politically would be postponed till after the election. This makes the decision on the timing of the election of paramount importance to the matter of Labour being re-elected with a strong — but diminished — majority.

The Prime Minister knows well what his administration has to do ... and needs no help from people given whistleblower status.



Michael Falzon

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## Why Texas's anti-abortion law is not a whistleblower law

*National Law Review*, volume XI, number 261, 16 September 2021

THE NEW LAW IN TEXAS which effectively bans abortions in the state (S.B. 8) contains a provision deputizing citizens to sue those involved in performing abortions. Under this bounty provision, when a suit is successful, the plaintiff can receive cash judgments of \$10,000 from those they sue.

This bounty provision has been compared by some to whistleblower reward laws, which compensate individuals who expose violations of the law. However, leading whistleblower law expert Stephen M. Kohn, explains that the Texas law is, in fact,

not a whistleblower law and bears no relation to whistleblower reward laws.

### The Texas anti-abortion law has been described as a whistleblower law, is that accurate?

Kohn: No, the Texas law operates under entirely separate principles from whistleblower laws and is at odds with the American legal system. The Texas law enables vigilantism. It allows individuals to take the law into their own hands. Whistleblower laws, in contrast, marry the whistleblower to the responsible federal agency.

All of the modern whistleblower laws tie the whistleblower directly to the government. Under some laws, the whistleblower has no rights independent of giving evidence to the government. And under one law, where they can file a lawsuit, it is filed in the name of the government and ultimately the government has complete control of the suit and can dismiss it at any time.

By these checks and balances whistleblower laws are not vigilantism. The Texas law, on the other hand, removes law enforcement agencies from the law and fosters vigilantism.

### How does the Texas law compare to the Dodd-Frank Act whistleblower law?

Kohn: There is no similarity whatsoever. Under the Dodd-Frank Act, the whistleblower gives evidence of the crime to the government, and only the government prosecutes. In the Texas law, the government's role is specifically prohibited. It is a perversion of the whistleblower process found in the Dodd-Frank Act.

### How does the Texas law compare to the *qui tam* provisions of the False Claims Act?

Kohn: The Texas law does not share the fundamental principles of the False Claims Act (FCA). First, under the FCA, whistleblowers file suits in the name of the United States government. The Texas law, on the other hand, is purely private. Second, under the FCA, a whistleblower must give the government all of their evidence. In the Texas law, no such procedure exists because the state cannot get involved. Third, under the FCA, the United States government can intervene in the action and take it over, converting it from a

semi-private action to a government action. Under the Texas law, such intervention is prohibited. Fourth, the United States under the FCA always remains involved. They can dismiss the suit at any time, they can put restrictions on discovery, and they have to approve settlements. So although the FCA gives some power to an individual to pursue a claim, the ultimate authority resides with the government.

Furthermore, the sanctions in a FCA case are only based on the harm suffered by the government. There is no private right of action, a whistleblower cannot obtain any compensation on their own. It is only based on how the government has been harmed. Finally, the constitutionality of the FCA was predicated not on the right of a citizen to become a vigilante, or to take the law into their own hands, which is what the Texas law does. The FCA's constitutionality was predicated on what is known as an "assignment of interest," meaning the law understands that all of the rights involved in the case are those of the United States government. The government has simply chosen a particular way to pay people who provide invaluable services to help the government enforce the law.

There are numerous guardrails in the FCA that prevent vigilantism and prevent abuses. These include the right of a defendant to obtain attorney's fees from any whistleblower who abuses the process.



Protest against the Texas law

### How does the Texas law's empowering of individuals to enforce the law without any controls from the state compare with other whistleblower laws?

Kohn: The Texas law explicitly violates one of the most important whistleblower laws ever passed: the Civil Rights Act of 1871, which protects the constitutional rights of all citizens, including the rights to blow the whistle

and to free speech. The Act was also known as the Anti-Ku Klux Klan Act. During Reconstruction, the KKK, often cloaked with local legal authority or acting when local legal authority just stood by, did vicious attacks on individuals' rights. So the Civil Rights Act of 1871 was passed to prohibit that type of vigilantism. The Act did not prohibit private action that was done by the state directly. It instead used the concept "under color of law." At the time, private citizens could act "under color of law" to enforce things like laws against intermarriage, segregation, keeping African Americans off of juries. If there was a law in place, then the Klansmen could wrap themselves around it and say "I'm just trying to enforce the law," when committing terrible violations of rights. The Civil Rights Act of 1871 targeted that sort of misbehavior which is a stain on democracy.

The Texas law's attempt to keep law enforcement out of the law is a reversion back to the outrages of the Klu Klux Klan during Reconstruction. It opens the door to citizen vigilantism "under color of law" which fueled the worst abuses that African Americans suffered during the most disgraceful episodes of Reconstruction.

*This article was written by Geoff Schweller.*

## Ag-gag laws suppressing whistleblowers experience defeat

Kevin Gosztola

*The Dissenter*, 24 August 2021

LAWs intended to suppress journalism, whistleblowing, and speech on the food and agriculture industry continue to experience defeats in the United States court system.

Known as "ag-gag" laws, the Tenth Circuit Court of Appeals ruled against the ag-gag law in Kansas, which became the first state to pass such a law in 1990.

The Eighth Circuit Court of Appeals ruled on August 9 that a coalition of organizations proved they could be targeted by the ag-gag law in Arkansas and may proceed with their lawsuit. It also ruled on August 10 that Iowa's

2012 ag-gag law was partly unconstitutional.



In all three states, the Animal Legal Defense Fund (ALDF) was one of the plaintiffs challenging the manner in which these laws threaten freedom of speech under the First Amendment.

"Kansas has hindered the ability of whistleblowers to expose inhumane conditions associated with factory farms for more than three decades while infringing on First Amendment rights," ALDF executive director Stephen Wells declared. "The Tenth Circuit's decision is a victory for animals throughout the state, who are forced into industrial animal agriculture and suffer in secret behind closed doors."

According to ALDF, "Kansas is a major agricultural producer with the third-most cows of any state, and until being struck down, its ag-gag law had successfully prevented whistleblowers from investigating the conditions that millions of pigs, cows, and chickens endure."

The defense fund maintains it will be criminalized by ag-gag laws because the organization plants investigators as employees of animal facilities. As the Tenth Circuit summarized, once employed the investigators document animal abuse and then publicize the evidence.

"Because investigators would be willing to lie about their association with ALDF, ALDF fears its investigators would run afoul of the [law]."

"Kansas may not discriminate between speakers based on the unrelated issue of whether they intend to harm or help the enterprise," the Tenth Circuit stated. "But that is the effect, and stated purpose, of the provisions at issue."

The Tenth Circuit acknowledged the ag-gag law in Kansas punishes entry to facilities with "intent to the tell the truth on a matter of public concern."

## "A tool that can be used" against animal rights activists

When the law passed in Kansas in 2012, it was openly hostile toward ALDF. "In some states, animal rights activists with an anti-agriculture agenda have lied on job applications in order to gain access to farms or ranches and take undercover video, some of which is believed to be staged. This amendment is a tool that can be used against people using fraud to gain access to farms."

"This confirms what the text of the law alone demonstrates: the act places pro-animal facility viewpoints above anti-animal facility viewpoints," the Tenth Circuit added, which is viewpoint discrimination that violates the First Amendment.

The Eighth Circuit's decision on the Iowa ag-gag law was less of a victory. It found nothing unconstitutional about prohibiting the accessing of agricultural production facilities through "false pretenses." However, it rejected the employment provision because it allows for the prosecution of individuals, even if those false statements do not influence an offer of employment.

The majority suggested Iowa could "fix" the law by targeting "false statements that are material to a hiring decision." (It's unclear if that would be supported by ALDF and other plaintiff organizations.)

In Arkansas, ALDF, along with Animal Equality, the Center for Biological Diversity, and the Food Chain Workers Alliance, sued Peco Foods, Inc. and Jonathan and DeAnn Vaught, a member of the Arkansas House of Representatives who is part of Arkansas Farm Bureau, Arkansas Cattlemen's Association, and Arkansas Pork Producers.

The groups allege that they plan to investigate Peco Foods' chicken slaughterhouse and the Vaughts' pig farm, but they cannot do so without facing criminalization under Arkansas' ag-gag law, which allows civil suits to target undercover investigators who may seek employment. It also permits the criminalization of anyone who collects information "by personal observation or use of unattended recording devices."

DeAnn Vaught apparently sponsored the legislation, and the plaintiffs believe this stemmed from a desire to conceal the conditions for animals on

their farm. They additionally maintain that Peco Foods uses a “high-speed slaughter” line at their facilities, as well as a “live hang” method for slaughtering the animals.

The Eighth Circuit examined ALDF’s allegations related to what would happen to them under the ag-gag law if they investigated Peco Foods or the Vaughns’ farm and determined their “fear of enforcement” was “objectively reasonable.”

Their lawsuit will return to the lower court and challenge the constitutionality of the law.



**Iowa makes audio or video recording a “trespassing” crime**

Iowa lawmakers recently escalated their attacks on journalism or whistleblowing around animal abuse in the food industry, passing a law that explicitly designates audio or video recording as “trespassing” crimes.

ALDF argues “the law threatens increased penalties for recording even in public places and locations advocates have long used for public advocacy, such as in open areas of legislators’ offices and parts of businesses in which other members of the public regularly come and go.”

“After repeated attempts by the state of Iowa to thwart animal advocates’ efforts to document the inhumane treatment of animals on factory farms, the legislature has enacted a new and broader law that deceptively impacts a broad range of industries while still maintaining its original — and unconstitutional — purpose of suppressing speech about industrial agriculture,” according to Wells.

ALDF and others in a coalition of groups filed a fresh lawsuit in Iowa on August 10.

Each expansion of measures aimed at suppressing journalism, whistleblowing, and speech around animal abuse serves agribusinesses and their lobbyists who are threatened by transparency

and accountability. It also defies federal courts throughout the country, which continue to strike down these laws.

So far, laws were found unconstitutional in Idaho, North Carolina, Wyoming, and Utah. North Carolina appealed.

Though Judge Leonard Gras, who is part of the Eighth Circuit, backed the decision that upheld part of the Iowa ag-gag law, he commented, “At a time in history when a cloud of censorship appears to be descending, along with palpable public fear of being ‘canceled’ for holding ‘incorrect’ views, it concerns me to see a new category of speech which the government can punish through criminal prosecution.”

Most of the lawmakers, who back these laws that protect agribusiness interests by criminalizing speech, are the same elected politicians constantly prattling on about “cancel culture.”

“Ultimately, the Supreme Court will have to determine whether such laws can be sustained or whether they infringe upon the ‘breathing room’ necessary to effectuate the promise of the First Amendment,” Gras concluded.

**End the war on whistleblowers**

**Biden says he wants to restore faith in the U.S. government, but he’s slow-footing the reforms that would end the destructive crackdown practices of his predecessors.**

Zena Wolf

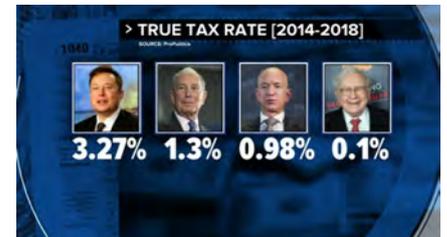
*The New Republic*, 5 July 2021



LAST MONTH, *ProPublica* published a jaw-dropping look into the IRS [Internal Revenue Service] data of well-known billionaires, revealing their meager effective tax rates in detail. The disclosures were met with shock and anger. After all, how could Jeff Bezos, Elon Musk, Michael Bloomberg, and George Soros go years without paying federal income taxes? And how could this

possibly be legal? The article, the first in a series from *ProPublica*, renewed public cries that billionaires should, in fact, pay their fair share.

Instead of responding to the public momentum for comprehensive tax reform, some of the most important voices in the Biden administration promised to launch an investigation into *ProPublica*’s sources while expressing no anger at what they brought to light. Attorney General Merrick Garland, days after the story was published, called finding the source of the leak a “top of [his list]” priority. IRS Commissioner Charles Rettig (a Trump holdover who inexplicably remains in office more than five months into Biden’s term) immediately launched an investigation to find the leaker without indicating any plan to address his agency’s abject failure to tax the ultrarich.



As disappointing as the Biden administration’s response has been, it falls in line with the executive branch’s longstanding tendency to villainize whistleblowers and leakers in order to deflect from government wrongdoing revealed by these actors. Official whistleblower channels are deeply flawed: As early as 1992, the U.S. Merit Systems Protection Board found that approximately one-third of government employees who disclosed wrongdoing felt that they had received threats or retaliation. Even after the 2012 Whistleblower Protection Act, which many advocates view as woefully inadequate, whistleblowers faced internal retaliation, dismissal, and even prosecution.

The recent case of Treasury official Natalie Mayflower Edwards Sour demonstrates the onerous lengths whistleblowers need to go to be heard and the risks they face for speaking out. While at the Treasury’s financial crimes division, Edwards believed Treasury officials had illegally collected and stored data on American citizens, and attempted to raise alarms through the official whistleblower channels. When

the information she brought to the department was not acted upon, she leaked suspicious activity reports, or SARs, to BuzzFeed News and the International Consortium of Investigative Journalists, revealing global failures to police money laundering that implicated Wall Street giants, including JPMorgan Chase, HSBC, Deutsche Bank, and Bank of New York Mellon. As a result, governments across the world held hearings and proposed reforms to a clearly broken system, and the FinCEN Files investigation was nominated for a Pulitzer Prize.



The Treasury responded by cracking down on the source of the information. In June 2021, Edwards was sentenced to six months in prison for “violating her oath.” Calls for Biden to pardon Edwards seem unlikely to be heeded; her story will be used as a warning tale to further silence civil servants looking to stop government wrongdoing.

During Biden’s last term in the executive branch, the Obama administration used the Espionage Act in unprecedented ways to silence whistleblowers and leakers; eight of the 13 people tried under the law since its enactment in 1917 were tried during Obama’s tenure. President Obama stoked fears about leaking to silence prominent whistleblowers, including Chelsea Manning and Edward Snowden, who revealed a variety of unethical and criminal practices during the Iraq and Afghanistan wars, as well as deeply invasive and unconstitutional National Security Administration policies. By framing the information about the NSA’s illegal spying as one of national security, the administration labeled Snowden a threat and mostly ignored the enormity of the illegal mass surveillance on which he shed light. In 2013, *The New York Times* Editorial Board, not exactly the harshest Obama critics, published an editorial condemning Obama’s over-prosecution of government whistleblowers and leakers, saying the administration had

“gone overboard in its zeal to find and muzzle insiders.”

Predictably, the Trump administration drastically escalated the crackdown on whistleblowers and leakers, referring a record number of classified leaks for criminal investigation and equating whistleblowers with traitors in inflammatory and damaging language. Trump also politicized leaking and whistleblowing investigations to an unprecedented degree, targeting Democratic lawmakers and their families in leak investigations pertaining to the Russia investigation and his own impeachment.

Biden now has a golden opportunity to reverse this trend, and some of his early actions inspire hope. In November 2020, Biden named whistleblower Rick Bright to the coronavirus task force, and in May 2021, Biden proposed a steep increase in the budget for whistleblower protections at the Occupational Safety and Health Administration, from \$18.6 million to \$25 million. However, a close look at his executive branch personnel suggests that major obstacles to tackling the lack of whistleblower protections will remain. The Biden administration is currently stacked with individuals who helped weaponize whistleblower concerns and silence dissent during the Obama years.



Rick Bright

Biden’s pick for the Treasury Department’s general counsel, Neil MacBride, cracked down on whistleblowers as the U.S. attorney for the Eastern District of Virginia. MacBride personally led the investigations into Manning and Snowden, as well as the criminal charges against Snowden. He also subpoenaed then-*New York Times* journalist James Risen, arguing that Risen did not have the right to claim First Amendment protection when he refused to disclose his source inside the government. MacBride’s potential position at Treasury is especially worrisome in

light of the IRS and FinCEN whistleblowers; if confirmed, he will help shape not only the Treasury’s response to those disclosures, but the Department’s relevant priorities moving forward.

At the Justice Department, to which leaks are referred for criminal investigation, Deputy Attorney General Lisa Monaco holds an enormous amount of power: all 93 U.S. attorneys report to her, and she has responsibilities as the attorney general’s second in command. In 2015, Monaco led the White House’s public response to calls for Obama to pardon Snowden. Monaco, in a statement, called Snowden “dangerous” and warned of “severe consequences” to his disclosures. In a letter signed by over 40 groups, including Human Rights Watch, the ACLU, Government Accountability Project, and Equal Justice Alliance, advocates argued that Monaco’s statement “grossly misleads the American public” about Snowden’s actions, noting that there were no constructive channels for Snowden to challenge the NSA’s actions, and he did not have adequate protections against retaliation.



Lisa Monaco

Monaco’s Department of Justice is currently facing a major test of its commitment to protecting free press and ending the dangerous policies of Donald Trump (some of which are direct legacies of President Obama). In the past two months, the Justice Department disclosed that during the Trump administration, it aggressively targeted journalists to investigate leaks, secretly seizing the phone records of four *New York Times* reporters and several from

*The Washington Post* in 2017, and requesting more than 30,000 email records from a CNN reporter. In response to these revelations, Biden called the practice of seizing journalists' phone records "simply wrong" and said under his leadership, he would "absolutely" prevent the Justice Department from continuing the practice.

However, Biden's off-the-cuff remark does not mark a policy shift at the DOJ. At a White House briefing the same day, Press Secretary Jen Psaki failed to denounce the practice, and Attorney General Merrick Garland, while promising to curtail the DOJ's efforts against whistleblowers, made the blatant caveat that the DOJ would still pursue journalists breaking the law in stories about leaked documents "unrelated to the leaking." By making this distinction, Garland is giving himself public permission to do everything he can to protect Trump-era whistleblowers, while ensuring Biden-era whistleblowers are still treated as criminals and traitors who belong behind bars. Formal guidance, and official commitments, are necessary to restore public trust in the Department of Justice's impartiality and commitment to protecting the rights of American citizens.

Protecting whistleblowers is an absolutely necessary step to fulfilling the Biden campaign's repeated promise to restore "faith in American government." Biden should increase whistleblower protections, codify his campaign promises to government employees, and ensure that his administration prioritizes good policy and transparency over its own power. His biggest obstacle may be the very people he's tapped for his administration, people who earned Beltway accolades for gagging whistleblowers and creating a chilling effect that might dissuade public servants from reporting corruption and wrongdoing. Only by reversing the decades-long trend toward prosecuting and silencing government whistleblowers can Biden truly create a stronger and more transparent executive branch.

Zena Wolf is a senior researcher at the Revolving Door Project, researching corporate BigLaw, antitrust enforcement, and financial regulation in the executive branch.



Zena Wolf

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## The journalist and the whistleblower

James Risén

*The Intercept*, 14 April 2021

**WHEN I BECAME** a reporter, I was surprised to discover a trait that I had never before recognized in myself.

People liked to talk to me. They liked to talk to me so much that they often revealed things they weren't supposed to share. They did so voluntarily.

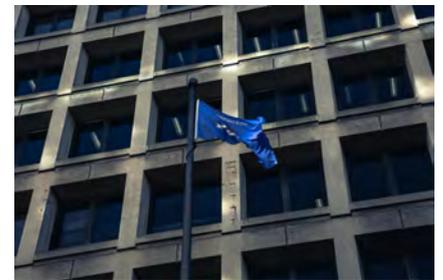
I noticed this when I was 23 and working in my first job as a reporter at the *Journal Gazette* in Fort Wayne, Indiana. One day, I was meeting with the director of the Fort Wayne Chamber of Commerce, the most pro-business man in town, when he suddenly told me to get into his car and drove me to a factory with no signs or exterior identification. He explained that the building I was looking at was the secret plant of a company trying to hide from regulators and labor unions. A few months later, I was standing in a large crowd of reporters covering a strike at International Harvester, then Fort Wayne's largest employer, when someone who worked there walked up to me and whispered that I should follow him. When we got to his car, he opened the trunk to reveal boxloads of secret International Harvester documents — and told me to take all of them.

Things like that have continued to happen throughout my career, and I've been surprised every time. While I was working on a book about the anti-abortion movement, Joseph Scheidler, one of the nation's leading anti-abortion extremists, gave me the keys to his Chicago office and told my co-author and me that we could spend an

entire weekend going through his personal files by ourselves, with no one else around. We found lots of documents that made him look bad, and I never understood why he let us do it.

I've always thought of this strange capability as a trait rather than a skill, because I don't recall ever doing anything to make it happen. In most fields, such a trait would be modestly helpful. But for an investigative reporter, it is all-important.

Yet for today's investigative reporters, particularly in the field of national security reporting, being good at getting people to talk can seem like a curse.



FBI Investigations headquarters, Washington, D.C., October 24, 2019.  
Photo: Elise Swain/*The Intercept*

In the 21st century, hatred of the press has become bipartisan, and government leak investigations under both Republican and Democratic administrations have altered the landscape for national security reporting. Starting with the George W. Bush administration in the years after 9/11, the federal government has brought criminal charges in nearly 20 cases related to leaks to the press, virtually all of them involving national security matters. In almost all of those cases, it is the sources who have faced criminal charges, not the reporters who published what the sources told them.

As a result, the fate of modern investigative reporting is now on a collision course with high-tech government leak investigations. Being really good at getting people to tell you government secrets — the key to career success as a national security reporter — now brings great danger to a reporter's sources.

The arrest and prosecution of a source can lead to a silent sense of guilt and shame. Silent because the reporter cannot publicly acknowledge

the source for fear of confirming the government's case; guilt and shame because the reporter's news organization rarely does anything to help a source facing federal prosecution. At major newspapers and television networks, there is an unspoken gulf between the reporter, who has a personal relationship with the source, and top managers, who don't.

The Department of Justice and the FBI consistently exploit this guilt and shame by pointing out, in official court documents in virtually every leak case, the supposed mistakes reporters have made that government agents claim somehow helped them identify the sources of information.

The truth is that the federal government doesn't need a reporter to make a mistake in order to track down a whistleblower. The government has immense surveillance powers, and those powers are at their most robust when it comes to tracking someone with a security clearance and access to classified information.

Most people who go to work for the government, or even for a government contractor, have only a vague understanding of how much of their privacy and civil rights they are signing away when they get a security clearance. Once the government launches a leak investigation, there are few limits on its ability to track the digital footprint of a suspect working in the national security apparatus.

Most reporters think hard and work tirelessly to protect confidential sources and now widely use encrypted electronic communications. But government leak hunters have the National Security Agency on their side, and reporters don't.

Yet arresting and prosecuting a source isn't enough for the Justice Department and the FBI; they also want to make the reporter look bad. That underscores the real goal of leak investigations: They are designed to have a chilling effect on the press, to stop reporters from investigating the government. Embarrass enough investigative reporters and maybe they will stop embarrassing the government.

To their disgrace, the rest of the media often plays along with this governmental shaming project. Rather than recognizing that a source is a whistleblower performing a public

service, the press invariably buys into the FBI's propaganda that the bureau's agents are investigating a crime and tracking down a traitor.

Press coverage of leak investigations and prosecutions follows a depressingly predictable narrative arc. The whistleblower who is a source for a story is depicted as a criminal who has been cornered and arrested by the heroic FBI, while the investigative reporter who broke the story is described as an accessory to a crime. The press unquestioningly plays up any supposed evidence presented by the government that the reporter made mistakes that were somehow the reason for the whistleblower's arrest and prosecution.

This professional censure, along with the constant anxiety of knowing that the government is using all its vast power to locate sources, has led many investigative reporters into a period of second-guessing and introspection. Should a reporter who has the natural gift of getting people to tell them secrets keep using that gift if it can put people in prison?

The argument to continue reporting is powerful. Almost everything we know about the conduct of our 20-year forever wars has been made public thanks to aggressive national security reporting. People forget that something as basic as the very existence of the armed Predator drone was classified until legendary journalist Sy Hersh reported that it was being used to kill people in Afghanistan.

Unfortunately, the government's leak crackdown has made the counterargument — not to keep developing sources and uncovering secrets for fear of putting people at risk — compelling as well. For national security reporters today, being good at your job can make it hard to sleep at night.

**I HAVE BEEN** thinking a lot about this dilemma recently because of several new developments in the government's war over leaks.

In January, in the closing days of Donald Trump's presidency, there was a campaign to convince Trump to pardon WikiLeaks founder Julian Assange. That campaign failed; hopeful Assange supporters seemed to ignore the fact that it was the Trump

administration that had indicted Assange in the first place.



James Risen participates in a news conference where press freedom advocates speak about the Justice Department's pursuit of Risen's confidential sources at the National Press Club in Washington, D.C., on August 14, 2014. Photo: Chip Somodevilla/Getty Images

That was followed by a decision in February by the incoming Biden administration to appeal a ruling by a British court rejecting Assange's extradition to the United States. For now, Assange remains imprisoned in Britain, but if the Biden administration follows through with his prosecution, it would once again underscore the bipartisan nature of the government's crackdown on the press.

The Assange case is particularly troubling because the charges focus on the interactions between Assange and Chelsea Manning, the source of the U.S. military and diplomatic documents that WikiLeaks published a decade ago. If successful, the Assange prosecution could lead the government to prosecute investigative journalists based on the means by which they seek to obtain information from their sources.

In March, meanwhile, Daniel Hale, a former intelligence analyst, pleaded guilty in federal court to disclosing classified information about U.S. drone warfare programs. Arrested in 2019, Hale has been hounded by the government because he helped reveal the truth about the vicious and secretive processes used by the United

States to target and kill people around the world with drone strikes.

In addition, a new documentary film was recently released about Reality Winner, a whistleblower who was arrested after revealing classified information showing that Russian intelligence sought to hack into U.S. voting systems during the 2016 presidential election. Her disclosure showed that the U.S. intelligence community knew about the Russian hacking attempts but had not warned the American people or even state election officials. Its significance was detailed in a 2018 Senate report, which revealed that state election officials learned of the Russian hacking threat from press coverage, not the federal government. The Senate report was issued even as the Justice Department was prosecuting Winner for sharing the information.



Film still of Daniel Hale from the documentary "National Bird." Still: Torsten Lapp/Ten Forward Films

The common thread between Hale and Winner is that both were widely reported to have been sources for stories published by *The Intercept*.

Sonia Kennebeck's documentary, "United States vs. Reality Winner," is a heartbreaking tale of the pain and loss Winner and her family suffered following her arrest and subsequent court hearings and time in prison, where she remains today after pleading guilty to leaking classified information in 2018.

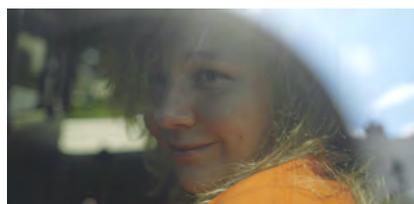
The centerpiece of the film is a recording of the FBI's initial, intimidating interview with Winner. FBI agents crowd into her small home in Augusta, Georgia, surrounding and badgering her until she confesses, without ever making it clear that she has every right to leave and get a lawyer.

The documentary also chronicles how every keystroke Winner has ever made on any digital platform is turned

into evidence against her: emails, tweets, private messages to her sister. "To see the vast surveillance machine spit out fragments of private online conversations that are indefinitely stored even after users delete them confirms the concerns of journalists and privacy advocates," Kennebeck wrote in a director's letter accompanying the film. "If nothing is off limits — not even silly messages exchanged between sisters, or personal journal entries written in anguish — what prevents character assassination and blackmail? How can individuals stand up to the might of such an omniscient state?"

Winner has acknowledged that she anonymously sent an NSA document about the Russian hacking efforts to a news outlet, identified in press reports as *The Intercept*, which published a story about it in 2017. (The Press Freedom Defense Fund, a program of First Look Institute, of which I am the director, paid Winner's legal fees. First Look Institute is also *The Intercept*'s publisher.)

*The Intercept* has been heavily criticized for mistakes in its reporting on the document, which it received anonymously, mistakes that critics say helped identify its source. Kennebeck's film highlights *The Intercept*'s mistakes as well. Yet her director's letter includes an observation that dovetails with my own thinking: "In all the human imperfection of Winner's leak and *The Intercept*'s serious failures in protecting her as a source, what whistleblowers and journalists are facing is an overwhelming adversary: The United States government with its unlimited resources and surveillance capabilities. With few constitutional restraints and aided by the Espionage Act, a draconian century-old law, prosecutors seem to have the upper hand."



Film still of Reality Winner from the documentary "United States vs. Reality Winner." Still: Torsten Lapp/Codebreaker Films

**THIS BRINGS ME** back to the dilemma facing investigative reporters today. Is it morally right to keep reporting and to continue developing sources in a climate in which the dangers are so clear? Should American investigative reporters step back from their work because of the risks to sources?

I have privately struggled with this question for years. I've concluded that the only solution is for investigative reporters to keep working and keep developing sources, because American democracy demands it.

At the same time, investigative reporters must be completely honest with their sources about the risks they face. A reporter who consciously betrays a source will not last long. In fact, I've found that being honest with sources is the only way to get them to talk. It is also the only way I can live with myself.

As the threat from leak investigations has increased, I've tried to be even more brutally honest with sources than before. I've sometimes told sources who want to provide me with sensitive information to go home and think about the risks first. In some cases, I have also told sources that I will not publish anything based on the information they've provided because I judged the story not significant enough to justify the risks to the source. In my work as an investigative reporter, I've made many mistakes. I often recount these to potential sources so they know what they're getting into when they talk to me.

The astonishing thing is that being open and honest with sources about the potential risks actually makes them even more willing to talk. Telling them the truth makes them want to tell the truth. And that leads the investigative reporter back to square one: What to do about this gift for getting people to talk?

Keep using it for the good of journalism, and the good of the country and the world. But if investigative reporters are to continue working in this nightmarish environment, I believe that one thing must change. The rest of the media must stop enabling the Justice Department and the FBI. The press must stop covering leak investigations like bank robberies and start covering them for what they really are: threats to press freedom.

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## Whistleblowers Australia contacts

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Facebook <https://www.facebook.com/Whistleblowers-Australia-Inc-172621456093012/>

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### Previous issues of *The Whistle*

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Thanks to Cynthia Kardell and Lynn Simpson for proofreading.

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## Annual General Meeting

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Whistleblowers Australia's AGM will be held at 9am Sunday 21 November — online via Zoom. If you wish to attend, contact the national secretary, Jeannie Berger, phone 0414 911 160, email [jayjellybean@aol.com](mailto:jayjellybean@aol.com), or postal address as below. Participants will be notified of the meeting URL and password prior to the meeting. Participants can join via video or phone. More details will be available closer to the meeting time. For those unsure about their Internet connections, there will be a test run Friday 19 November, 7pm.

**Nominations** for national committee positions must be delivered in writing to the national secretary (Jeannie Berger, PO Box 458, Sydney Markets NSW 2129) at least 7 days in advance of the AGM, namely by Sunday 14 November. Nominations should be signed by two financial members and be accompanied by the written consent of the candidate.

**Proxies** A member can appoint another member as proxy by giving notice in writing to the secretary (Jeannie Berger) at least 24 hours before the meeting. No member may hold more than five proxies. Proxy forms are available online at <http://www.whistleblowers.org.au/const/ProxyForm.html>.



## Whistleblowers Australia membership

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

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

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

Renewing members can make your payment in one of these ways.

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](mailto:wba@whistleblowers.org.au). Use your surname/membership as the reference.

New members: [http://www.bmartin.cc/dissent/contacts/au\\_wba/membership.html](http://www.bmartin.cc/dissent/contacts/au_wba/membership.html)