*"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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Frances Haugen

## We have no skeletons in our closet, only the well-worn habits that have served us so well.

Cynthia Kardell

WHEN the national committee of Whistleblowers Anonymous met on 26 March 1993 in Canberra, two things fundamental to our future were agreed. The group changed its name to Whistleblowers Australia and authorized each state branch to set up its own caring and sharing (C&S) meetings for newcomers seeking information and our advice and support. The records show the (then) national director John McNicol suggested the name with Isla McGregor, a Tasmanian member, urging the second change.

By the following May they'd reserved the name Whistleblowers Australia and work was underway to draft a national constitution to include a branch structure, part of formally incorporating the association under the NSW Associations Incorporated Act 1984. David Roper, former diplomat and the first NSW branch president, appears to have largely driven the work. The final text was authorized by the national committee in October 1993, with the registration process complete by February the following year.

I remember these were heady days. There were plans in NSW for an act to protect whistleblowers for speaking out both anonymously *and* openly, which seems in part to have prompted the name change and crystallized their ideas, about how best to support whistleblowers. The Whistleblowers Protection Bill 1992 was tabled in Parliament in February 1993. It became the Protected Disclosures Act in 1994 and is now the Public Interest Disclosures Act (NSW) 1994. A Green's bill for a stand-alone protection agency for whistleblowers was being considered by a Senate committee and a steady stream of really damaging revelations, leading up to the Royal Commission of Inquiry into Police Corruption ("Wood Royal Commission") in 1995-7 only added to the political upheaval.

I've rummaged through the records and my memory, together with those of my longstanding friend and member Debbie Locke for what came next. Debbie is a former police detective and whistleblower to the 1995–97 Wood Royal Commission. Debbie joined in October 1994. I joined in May the following year.

The inaugural meeting of the Whistleblowers Australia NSW Branch was held on 27 June 1993 at the Journalists Club in Chalmers St., Sydney. The following monthly meeting was held at the same address, with the August meeting moved to the Housing Commission Hall in Glebe. By September it was at St. John's Hall in Glebe. St. John's looked like becoming a permanent home by December the following year, but it wasn't to be. But by then they were setting aside time in the meeting for a C&S session. The newcomer was asked to share their story after a seasoned member or two led the way by sharing theirs. It was a start, but not considered optimal.

St John's Parish Hall, Glebe

Debbie had started seeing psychiatrist and Whistleblowers Australia president Jean Lennane in early 1993. She says Jean always urged her to come to meetings to meet up with other whistleblowers, but Debbie didn't want to leave her baby daughter. Jean continued to urge her to join, which she eventually did in October 1994. One thing led to another, with Debbie offering in December to host the meetings at her home in Rozelle as a temporary measure. I doubt she knew what she was letting herself in for at the time. She says today, with that lovely wide grin of hers, that she enjoyed the meetings, but the trouble was the "buggers" wouldn't go home. Laughing and talking in the street outside her bedroom window, long past her calling it time. It was obvious to everyone a C&S session wasn't going to fly in that situation.

Debbie was also attending Alcoholics Anonymous at the Presbyterian Church Hall in Campbell Street, Balmain. The minister, Ivan Ransom, who she knew well was busy trying to build his congregation. (Deb says it was in competition with the nearby Congregational Church.) So, once again one thing led to another, with Ivan offering us his Church Hall for our monthly Sunday meetings and Tuesday nights for the C&S meetings. This marked the beginning of a long association with Ivan, who cheekily assured me Jesus was the very first whistleblower. By the time I turned up to my first C&S meeting in early 1995 they appeared to have got their act together, but I am getting ahead of myself here.

C&S meetings had to allow people to tell their story, confident it wouldn't turn up anywhere else. We needed to do no harm. Those attending needed sound, independent information from those with only their best interests at heart. To be able to swap stories with others, who instinctively understood where they were coming from. Give voice to their innermost fears. Have a laugh or a good cry if need be. In fact, anything at all within the limits of mutual civility and respect. The challenge was how to enforce that openly within a caring and sharing environment. It was every Tuesday, except for a short break over the Christmas period. No booking required.

I was responsible for the meetings from early 1996, initially supported by one or two committee members like Richard. It was Richard's decision to ignore everything that we held dear that gave us one of our biggest challenges.

In February 2000 ten of us gathered for the Tuesday night C&S in Balmain. National president Jean Lennane joined us briefly to introduce a newcomer, Peter, a Qantas pilot, before slipping away into the night. She made a practice of not attending as some of her patients were regulars. I reminded those present that what was said within the group was to stay within the group, as Peter had to be able to count on our

keeping his story confidential. I reminded everyone it was his story to tell, not ours. I asked anyone not willing to abide by that not to stay. I had no reason to think anyone would do anything other than what they'd always done.

Peter flew jets out of an Asian Capital which I remember being Bangkok on a long-haul flight to Frankfurt. He explained how he had lodged a complaint about safety and engine capacity months back. Boeing was investigating the technical issues he had raised, with Qantas more interested in his complaint that financial considerations were risking passenger safety. I understood that to mean Qantas was pushing the pilots to trim their fuel capacity to carry more passengers. Peter believed it was this last aspect that saw him stood down on full pay almost immediately. Since then, he had been feeling the political heat. He said he was not alone in complaining. There were others.


Peter explained why the balance between fuel, engine capacity, passengers and cargo was critical to lifting off the tarmac safely at a precise moment and making it across to and possibly maintaining a holding pattern over Frankfurt if the weather was bad. As he explained it, it was one long exercise in precision. Pilots were required to sign off on all aspects, despite not having any real capacity to influence the passenger carrying capacity. He explained some of the pilots had also formally recorded the take-off as a critical incident in and of itself. Some had become a bit gung-ho with it, which Peter saw as a coping strategy that could undermine safety even further.

Peter was looking for support while he waited for the outcome. Richard thought he was shirking his responsibilities and putting the public at risk. Peter explained his contract stipulated he would be sacked if Qantas came to know he had told us his story. He said Boeing didn't consider the risk of a catastrophic accident an issue. I apologized, urging him to ignore Richard.

Peter didn't return. Richard argued he should go public with it. I reminded him it had been under investigation by Boeing for months, Qantas was on notice too, it was unlikely to risk its insurance if nothing else and it was not his story to tell without Peter's consent. It got everyone a bit exercised and some of the newcomers a little nervous.

Peter rang me at the end of March. He told me he had been sacked for telling Whistleblowers Australia. That "Richard' had written to the prime minister, who contacted Qantas. He was distraught, wondering whether he would ever find a job other than with Garuda, which he said was like going from the frypan into the fire. I asked him who I could contact. I rang and tried hard to persuade Qantas to change its decision without success. I brought Peter up to date and alerted the committee to the need to meet the following Tuesday. We worked out what we would do. I contacted Richard to explain why we wanted him to meet with the committee and not to attend the C&S meetings in the interim. He was unapologetic.

With each week that Richard did not attend I breathed a sigh of relief.

On the third week Richard joined the group. I explained what had happened to all those present and asked Richard to leave. He folded his arms across his chest and stared into the distance. I explained why we would have to wait outside until Richard went home. Eventually Richard came outside. The others thanked him, before going back inside. Richard followed us and sat down. We went back outside. It was approaching farce, but eventually he came out again. I was sad. I told him we could do this all night if we had to, so it would be better if he went home.

Richard left. The meeting continued. There was a real sense of camaraderie, as if we'd done something good. And we had.

On 2 May Richard came armed with a written submission. We had a robust exchange. Civil, but impassioned. Richard thought it unfair, not being able to attend future C&S meetings. I reminded him he was still able to attend everything else. We all pointed out in our different ways why we couldn't possibly urge newcomers to take us at face value with him present, knowing he'd put his interests ahead of Peter's and ours. None of this was ever kept a secret as we wanted it to do its job in the retelling. We understood that in sharing, we were caring for our good reputation.

Richard didn't attend the C&S meetings again, although he remained part of the wider community until he moved away from Sydney. Peter got a job with Garuda. I told Peter that Garuda had got the best end of the deal. I think of him from time to time and wonder how his life has been. He was generous enough to say he was better placed than most to weather the storm.

Peter's story is just one of many that marks us out as an organisation that understands what building a good reputation requires. On one occasion, a fellow literally trousered the donations that we made each week to cover expenses, later using them as small change to buy his lunch. With him present, I explained to the group why he was no longer responsible for collecting their donations. I remember he was sullen, but embarrassed, which was as it should be. He was openly chivvied by the others to lift his game. They were generous enough to make room for him to change.

The C&S meetings have taught me to treasure our good reputation by openly sharing our failures, because it's only in the retelling that you appreciate why it's better that way. We have no skeletons in our closet, only the well-worn habits that have served us so well. This has been made possible by the generosity and intellectual maturity of those who turned up uninvited in Balmain on a Tuesday night. I have been going through my records and I've found the great many who I've had the privilege of knowing. All of them different and yet the same. Many are still a part of our life in some way or capacity. I salute you all. It was a great investment then and it still is, even though we no longer meet in person at Balmain on Tuesday nights.

In 1993 a rather prescient branch president David Roper remarked they would "grow, merge and drop away" as need be. He was referring to subcommittees, but he may as well have been referring to the branches themselves. NSW did a good job by any measure, but that's a story for another day. It was

the growing availability of computers, internet and mobile phones that inevitably reshaped how the NSW branch organized itself. By July 2001 the formal branch structure was in gentle decline, with the Tuesday night C&S meetings evolving to allow a less formal approach to business until June 2011, when we formally closed the branch, while the C&S meetings lived on in another form.

In a funny way we've come full circle. At the beginning the national committee structure expanded quickly to accommodate the development of state branches in most states. They grew, merged, and dropped away. Some earlier than others and for very different reasons. Now we've reverted to an entirely national structure with regular, sometimes daily email interactions, again at an expanded committee level. The C&S function is continuing largely on a one-on-one basis by phone and online, which in hindsight is what most said they always wanted anyway. I wonder whether that was a case of be careful what you wish for? The wider membership remains what it has always been, although the internet has largely removed the need for us to come together in person. Covid-19 has accelerated that process. But we'll see, with our 30th anniversary still to celebrate in person in Sydney later this year.

Further reading: "The NSW experience with caring and sharing meetings — learning by doing," *The Whistle,* June 2001, pages 7–8.

Cynthia Kardell is president of Whistleblowers Australia.

## Learning from an early whistleblower story

Kim Sawyer

Whistleblowing has a long history that is often repeated. The case of Major Ian Fishback highlights the trauma of wartime and whistleblowing. Major Fishback blew the whistle on abuse of prisoners in Iraq. When the Army failed to act, he wrote to the US Congress. The result was the US Senate passing anti-torture legislation. However, Fishback suffered from post-traumatic stress disorder that resulted in his recent death. He was only 42.

The long-term consequences for whistleblowers are rarely studied. We understand the short-term reprisals, the legal, emotional, and reputational costs, and the difficulty in restoring careers, but there are few systematic studies of the whistleblowers of years ago. We do not know enough about the long-term effects. There is no *Where Are They Now* documentary about whistleblowers. What has happened to the whistleblowers of the past? Mostly we don't know.

History teaches how whistleblowing has evolved, and how the resolution of a whistleblowing case relies on people of good will to do something, rather than nothing. History provides lessons for the future. I decided to look at the historical case of Richard Marven, one of ten sailors on the frigate *Warren* who blew the whistle on Commodore Hopkins, Chief of the American Navy, in the Revolutionary War of 1776–83. Whistleblowers need to be believed. Marven and the other whistleblowers were believed. It was their good fortune to blow the whistle at the right time to the right people.

Replica of a frigate from the US Revolutionary War era

The ten sailors petitioned the Congress on February 17, 1777. The petition read in part:

> We who present this petition engaged on board the ship Warren with an earnest desire and fixed expectation of doing our country some service. We are ready to hazard everything that is dear and if necessary, sacrifice our lives for the welfare of our country, we are desirous of being active in the defense of our constitutional liberties and privileges against the unjust cruel claims of tyranny and oppression.

Each sailor swore affidavits citing examples of the misconduct of Commodore Hopkins. The Marine Committee of Congress investigated the matter and on January 2, 1778, the Congress resolved to remove Commodore Hopkins from his command of the Navy. Congress backed the whistleblowers.

Before he could be removed, Hopkins retaliated. In his last days as Commander in Chief, Hopkins ordered Marven to be arrested and court martialled for signing the petition. Marven's right of appeal was to Hopkins. Unsurprisingly, Hopkins sacked Marven. Marven was the first whistleblower fired in the United States, but Hopkins didn't stop. Hopkins sued the whistleblowers for criminal conspiracy and libel, demanding ten thousand pounds in restitution. Only two of the sailors, Marven and Samuel Shaw, were served with the writs. The other sailors were outside the jurisdiction of Rhode Island. Marven and Shaw were both jailed. On July 8, 1778, they petitioned the Congress.

What happened next makes this case special. Congress backed the whistleblowers, not only in words but in deeds. Congress paid for the legal costs of the whistleblowers. Congress provided the court with information, including the whistleblower depositions and the letters to Hopkins from John Hancock, President of the Second Continental Congress. There was real transparency. A jury acquitted Marven and Shaw, and Marven had his pension entitlements fully reinstated. Furthermore, on July 30, 1778, the Congress passed a resolution that

> That it is the duty of all persons in the service of the United States, as well as all other the inhabitants thereof, to give the earliest information to Congress or other proper authority of any misconduct, frauds or misdemeanors committed by any officers or persons in the service of these states, which may come to their knowledge.

The resolution came years before the 1791 First Amendment protecting freedom of speech. Many signatories to the resolution were also signatories to the First Amendment. The whistleblowing resolution was a preamble of the First Amendment and, in 2021, the US Senate for the eighth year designated July 30 as National Whistleblower Appreciation Day.

The case of Richard Marven provides important lessons. First, Marven and the other whistleblowers were believed by the US Congress. To be believed made the difference. Whistleblowing is a test of credibility. To be believed is to be regarded as credible. Second, the Congress provided real protection, not only legal costs but also entitlements. Third, the matters were dealt with expeditiously. The whistleblowers petitioned Congress in February 1777; a whistleblowing statute was passed less than eighteen months later. Fourth, the Congress gave information to the courts that exonerated the whistleblowers. A jury of peers, rather than a judge or regulator, decided in favour of the whistleblowers. The case highlighted the role of politics. Hopkins was well connected in Congress. Hopkins used and abused authority and connections, but it was not enough to save him. Whistleblowers with no means and no connections prevailed.

What implications for Australia? We have a shorter and poorer whistleblowing history. We have no First Amendment. We have no False Claims Act. Our governments don't support whistleblowers in courts. We have no prosecutions for whistleblower retaliation. We value transparency but only the nominal transparency that is found in textbooks. Networks prevail over whistleblowers. We have not had a judge of the standing of US Supreme Court Justice Brandeis who summarized the beliefs of the US founding fathers.

> Freedom to think as you will and speak as you think are indispensable to the discovery and spread of political truth; the greatest menace to freedom is an inert people.

Richard Marven was the first whistleblower sacked in the United States, yet his case underwrote not just whistleblowing laws, but the First Amendment to protect free speech.

The solution to whistleblowing is political, needing the right politicians at the right time. We have to change our political thinking, so that whistleblowing is regarded as a right. Perhaps we could consider two Constitutional Amendments, the first ratifying freedom of speech, the second the duty to report significant fraud and misconduct to Parliament. Australians may then understand, as the founding fathers of the United States understood, the importance of whistleblowing.

The best reference for Richard Marven's case is Stephen Martin Kohn, *The Whistleblower's Handbook: A Step-by-Step Guide to Doing What's Right and Protecting Yourself* (Lyons Press, 2011).

Kim Sawyer is a long-time whistleblower advocate and an honorary fellow at the University of Melbourne.

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BOOK REVIEW

## *Whistleblowing for change*

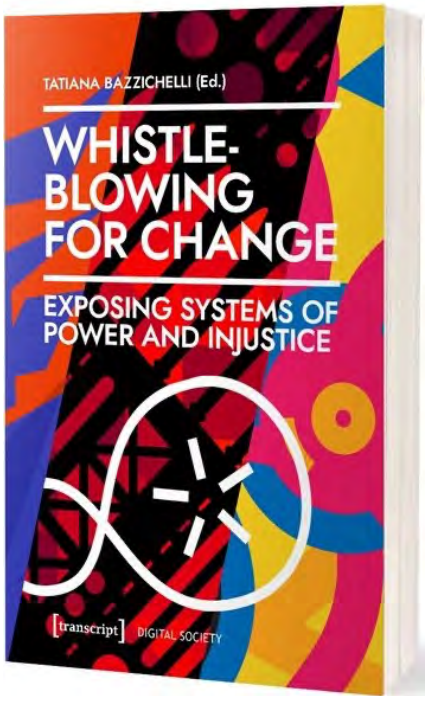
Edited by Tatiana Bazzichelli

Reviewed by Brian Martin

Tatiana Bazzichelli is an artist and activist. She is programme director of the Disruption Network Lab, based in Berlin, that promotes projects highlighting social issues, such as government surveillance. She has a special interest in whistleblowing. And she is the editor of a new book, *Whistleblowing for change.*

The book's subtitle is *Exposing systems of power and injustice.* This is an important aspect of whistleblowing. Many whistleblowers are mainly concerned about abuses and corruption in their workplace, and want the problem to be investigated and addressed, without any wider ramifications. But there has always been another important side to whistleblowing: exposing issues to the public as part of campaigns for social change.

Daniel Ellsberg's leak of the Pentagon Papers, a revealing history of the Vietnam War, is a classic example of whistleblowing for change. So is Edward Snowden's leak of a vast collection of documents from the National Security Agency, exposing worldwide surveillance.




Bazzichelli is primarily interested in recent activist-related whistleblowing. If this interests you, *Whistleblowing for change* is a must-read. It contains numerous chapters written by whistleblowers, artists, activists and journalists, plus there are interviews conducted by Bazzichelli.

The book contains six sections, each with four or five chapters. The first section, "Whistleblowing: the impact of speaking out," is the most traditional. In it, US and UK national security whistleblowers tell their powerful stories. Billie Jean Winner-Davis provides a moving perspective as the mother of US national security whistleblower Reality Winner, who was sentenced to five years in prison.

In the second section, "Art as evidence: when art meets whistleblowing," several artists tell how they incorporate ideas about whistleblowing into their creations. Bazzichelli twice interviewed Laura Poitras, the filmmaker Edward Snowden contacted for his disclosures, and who documented the process in the film *Citizenfour.* It is fascinating to learn how artists develop and express their ideas.

The theme of the third section, "Network exposed: tracking systems of control," is surveillance. Some of the contributions are about explaining systems of surveillance, which is not whistleblowing in the legal sense but in

the more general sense of communicating concerns to wider publics.

If we think of whistleblowing as telling someone in authority about a problem, it can stop as soon as the boss is informed. But when bosses and management refuse to act and close ranks, then it's necessary to take the message outside the organisation, and the role of journalists becomes crucial in many cases, so whistleblowing and journalism are closely linked. But journalists can do only so much, and sometimes additional effort is needed to raise awareness. This is where art as evidence comes in. It is not about breaking a story but about communicating a message — one that authorities do not want to be sent — to wider audiences. Art can sometimes communicate in ways or modes different from conventional text.

Surveillance is an issue that needs whistleblowers, such as Edward Snowden, but there are also aspects that need additional exposure, in original ways. Joana Moll has produced artworks that reveal hard-to-appreciate aspects of surveillance. In one work, *The Hidden Life of an Amazon User,* she downloaded all the captures of user data in a single purchase, printed them out and stacked them into an impressive pile.


The fourth section is "Uncovering corruption: confronting hidden money & power." The most prominent exposure of secret wealth came through the Paradise Papers. An anonymous whistleblower sent vast quantities of data from the firm Mossack Fonseca to the German broadsheet *Süddeutsche Zeitung.* The journalists who dealt with the leak were Frederik Obermaier and Bastian Obermayer. The usual journalistic decision would have been to break the story. Bazzichelli interviews Obermaier and Obermayer about their decision to involve hundreds of other journalists from around the world in a cooperative effort to maximise the impact of the disclosures. Their efforts could be considered "journalism for change," complementary to "whistleblowing for change."

Christoph Trautvetter tells how groups of activists in Berlin figured out the identity of people who owned tens of thousands of apartments in the city. This was a journey through all sorts of complex financial constructs used to hide ownership. This is an example of whistleblowing in a general sense, of exposing what those who are rich and powerful want to keep secret.

The fifth section is "Exposing injustice: challenging discrimination & dominant narratives." Daryl Davis titles his chapter, "Another type of whistleblower." As an African American, he has spent time talking to members of the Ku Klux Klan and other white supremacists and in many cases convinces them to renounce their racist past. He keeps a collection of Klan robes these individuals have given him. The opening of his chapter is a set of stories about white US police who have assaulted and killed blacks. We have heard of Derek Chauvin's murder of George Floyd, but there are many other cases. Davis is an effective change agent. Interestingly, he has been criticised by "people who look like him" for consorting with white racists.

Os Keyes' chapter is titled "Justice, change and technology: on the limits of whistleblowing." Its key theme is that in whistleblowing, too much reliance and attention is placed on the whistleblower and not enough on other people who are needed for anything to happen. When the whistleblower is treated as a hero, others are cast into the shadows. Keyes writes, "even truth-telling often involves multiple parties, and turning those truths into action always does." There is enormous attention on Julian Assange and Edward Snowden, leaving others involved in WikiLeaks and the Snowden revelations, who were essential to their impact, seemingly invisible. This is a useful insight for all whistleblowers: you can't do it alone. Building a network is essential to making a difference.

The sixth and final section is "Silenced by power: repression, isolation & persecution." The themes here will resonate with all varieties of whistleblowers because the experience of reprisals is so common. One chapter is by Daniel Hale, a US soldier who spoke out about killings in the drone program. The chapter is his statement to the court when he was sentenced to years in prison. In his final words, he ironically apologises that his crime was for using words and not for killing other humans.

Anna Myers spent years working for the British whistleblower support organisation Public Concern at Work, now called Protect. Of all the contributors to the book, she seems to have had the greatest experience talking with whistleblowers from all walks of life and seeing the way the system fails them.

Many whistleblowers, especially the employees who report a problem within their organisation, never set out to contribute to social change. They just want the problem investigated and fixed. Yet they have much in common with campaigners challenging racism, exploitation, tax evasion and war crimes: there are problems in society, some of them systemic, and speaking out about them is part of what's needed to address them.


Tatiana Bazzichelli

Despite the negativity of the many stories of reprisals and persecutions, the overall impact of *Whistleblowing for Change* is positive: whistleblowers and their supporters can make a difference. It's important to think broadly and make connections with allies in different fields, and to learn from experience.

Download the book for free at https://www.disruptionlab.org/book, or buy a hard copy.

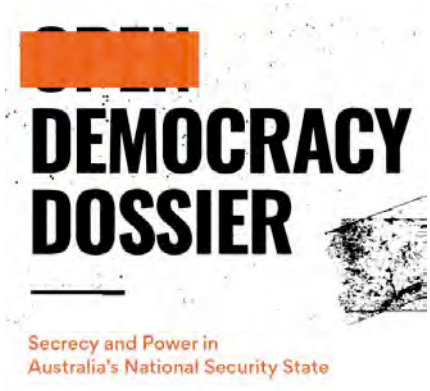
Brian Martin is editor of *The Whistle.*

# Media watch

## Cracking down on whistleblowers

Keiran Hardy, Rebecca Ananian-Welsh, and Nicola McGarrity
*Democracy Dossier: Secrecy and Power in Australia's National Security State,* September 2021, p. 65

Australia's counter-terrorism laws, especially the sweeping secrecy and espionage offences, are a major reason for this declining ranking. Australia not only has the most extensive and complex national security legislation in the western world; it also remains the only liberal democracy that has no codified national human rights protection. Unlike comparable democracies and our closest allies, in Australia, free speech and press freedom can be undermined by Parliament with no viable recourse in the courts.




Importantly, it is not just the fact that broad national security laws are available for authorities to use. It is also the development of political attitudes which suggest a willingness to use them against journalists, whistleblowers and lawyers. Until recently, a certain respect seemed to exist between government and the media. Media organisations felt some assurance that public interest reporting (even if it embarrassed the government) was valued and would not lead to legal action. Explicit protections were perhaps less necessary, because an unspoken rule said that journalists would not be prosecuted holding the government accountable. Today, government attitudes to media reporting have shifted, and assurances of protection are fragile.

This cultural shift can be seen in multiple investigations into the conduct of journalists, lawyers and whistleblowers who speak out in the public interest. Among these brave individuals are Dan Oakes and Sam Clark, the two journalists who were the target of the ABC raid; David McBride, the defence lawyer who gave them the Afghan Files; Annika Smethurst and her alleged source in ASD, who revealed proposals to expand ASD's powers; Witness K and Bernard Collaery, who revealed the ASIS bugging scandal; and Richard Boyle, who blew the whistle on ATO's unfair debt collection practices. These stories revealed serious wrongdoing and were clearly in the public interest. They were disclosed responsibly and seemingly raised no threat to life or ongoing operations. The resulting investigations and prosecutions appear to have more to do with avoiding political embarrassment and maintaining a hardline on government secrecy, than with genuine threats to life or national security.

This willingness to crack down on public interest reporting undermines the health of our democracy. It sends a clear message to journalists and others who wish to speak out against government misconduct to be very careful, or else they will face a similar fate. The threat remains even when prosecutions are eventually dropped or charges reduced, because, legally speaking, there is nothing in place to prevent similar prosecutions from moving forward.

## New research: most deserving whistleblowers get no protection

Professor A J Brown
*Griffith News,* 11 November 2021

NEW RESEARCH from Griffith University's *Whistling While They Work* project has revealed more than half of all public interest whistleblowers who experience serious repercussions for reporting wrongdoing receive no remedies for detriment they suffer despite Australia's long history of whistleblower protection laws and public sector policies.

Presenting at the 3rd Australian National Whistleblowing Symposium, Professor A J Brown from the Centre for Governance and Public Policy said the new analysis of more than 1300 whistleblowing cases in 33 organisations — 29 of them public sector — highlights "just how little traction current whistleblowing laws have had in facilitating remedies for those most in need after speaking up."

He said despite their managers and governance staff assessing them as being correct in their disclosure and deserving of organisational support, over half of public interest whistleblowers who experienced serious repercussions received no remedy at all.

Co-author Jane Olsen, a Griffith University doctoral scholar and partner investigator from the NSW Ombudsman's office, said just 6% of the whistleblowers ever received any actual compensation, including only 8% of those who lost their job, and only 4% of those assessed by their own superiors as having experienced serious harassment, intimidation or harm.

"Fortunately, we still know that not all whistleblowers suffer — and many organisations are good at acting on whistleblower reports — but if whistleblowing regimes cannot deliver justice for the many who do suffer serious stress, harassment or worse, then no-one should expect these laws and policies to be trusted," Ms Olsen said.

Professor Brown said the findings were "a wake-up call for the extent and urgency of reform needed to legal remedies for whistleblowers, as well as consequences for employers who fail to fulfil the promises of protection that employees and the community rightly expect."

The symposium, co-hosted by the Human Rights Law Centre, also includes:

- A keynote address by the Assistant Minister to the Attorney-General, Queensland Senator Amanda Stoker, on reform of federal public service whistleblower protections
- An update by Australian Securities & Investments Commissioner, Sean

Hughes on ASIC's approach to enforcing new private sector laws
• The launch of a Quick Video Guide to the first ever International Standard on Whistleblowing Management Systems for Organisations (ISO 37002), finalised this year and informed by Griffith University research.

"As members of the Standards Australia and ISO Expert Group, we hope and trust the new international standard will help all Australian organisations, and others around the world, turn these kinds of results around," Professor Brown and Ms Olsen said.

The Video Guide also features Professor Wim Vandekerckhove of Greenwich University and the British Standards Institute, who led the international expert group; and Clare Molan, Whistleblower Program Lead at ANZ, who also contributed to the group.

## The contemptible prosecution of Bernard Collaery is an assault on the rule of law

**The Coalition's vindictive legal campaign reveals its contempt for democratic rights and shows how easily prosecution can slide into persecution.**

Spencer Zifcak
*Pearls & Irritations,* 4 December 2021

THE CRIMINAL PROSECUTION of former ACT attorney-general Bernard Collaery is a perversion of justice. The Morrison government has spent more than $3 million on conducting a case that should never have been initiated. In pursuing the prosecution, Collaery has been brought to the brink of financial ruin. The government's legal strategy and tactics have been contemptible.

In its flagrant disregard of constitutional and legal principle, the government has abandoned its proper role as a model litigant and damaged the rule of law in Australia. In this article, I consider detrimental aspects of the strategy and tactics to make the point more clearly.

First, a brief reminder of how we have got here. It is well known that in 2004, at then foreign minister Alexander Downer's behest, the Australian Secret Intelligence Service (ASIS) planted surveillance devices in the Palaco Governo, the building that housed the offices of Timor-Leste's prime minister and the cabinet conference room.

The purpose of this intelligence-gathering enterprise was to listen in to Timor-Leste's cabinet deliberations concerning a legal dispute with Australia over the location of the maritime boundary between the two nations. The outcome of that dispute would determine the share of rich oil and gas revenues that Timor-Leste and Australia would receive from prospective drilling in the Timor Sea.

Through this secret surveillance activity, the Australian government obtained crucial information on Timor's case concerning the maritime boundary before the International Court of Justice (ICJ). This provided it with an unfair advantage in the oil and gas argumentation. In the end, to evade the ICJ's ultimate judgment, the Australian government withdrew from its jurisdiction.


Bernard Collaery
(Image: AAP/Lukas Coch)

Witness K had been an ASIS officer involved in the surveillance operation. He had been troubled by it. His reservations were magnified when Downer obtained a highly paid consultancy with Woodside Petroleum, the company responsible for exploiting the oil and gas reserves in the Timor Sea.

Witness K lodged a complaint with the Inspector-General of Intelligence and Security concerning the legality of the surveillance. The inspector-general agreed that Witness K could disclose relevant information in any related legal proceedings. Later, information regarding the secret surveillance operation made its way progressively into Australian and Timor-Leste's media.

In 2013, Timor-Leste sought to reopen proceedings on the maritime boundary issue in the Permanent Court of Arbitration in The Hague. It briefed Collaery to represent its interests. Witness K also briefed him to guard against any legal action that may arise from his decision to give evidence before the court. The Australian government put an immediate end to that. It cancelled his passport to prevent him from leaving the country to provide that evidence. His passport has still not been returned.

In the same year, the Australian Federal Police raided Witness K's and Collaery's home and office. At Collaery's office, it uncovered and took a copy of a detailed legal memorandum containing his advice to Timor-Leste's government on the maritime boundary. It also obtained a copy of Witness K's draft affidavit prepared as evidence for the Permanent Court.

Things went quiet for five years. Then, late in 2018, out of the blue and for reasons that are unclear, then attorney-general Christian Porter approved the criminal prosecution of Witness K and Collaery. In essence, the allegation was that they had disclosed classified information on the activities of ASIS, contrary to the Commonwealth *Intelligence Services Act*. Witness K and Collaery believed, with justification, that they acted in the national interest. They took their case — that the Australian government acted unlawfully by secretly tapping the Timor-Leste cabinet and engaging in contractual fraud — to the Permanent Court of Arbitration.

In 2019, Porter made an application to the ACT Supreme Court for parts of Collaery's trial to be conducted in secret. A secret trial, of course, constitutes a radical attack on the fundamental principles of open justice and fair trial, constituent elements of the rule of law. Justice David Mossop agreed that most of the trial should not be open to the media or the public.

The principal reason Justice Mossop agreed that large parts of the trial should be held in secret was that if Australia's

"Five Eyes" security partners learnt that sensitive intelligence documents were capable of public disclosure in Australia, the trust of our intelligence allies in the security of their own documentation here may be prejudiced.

Looked at abstractly, this was a persuasive argument. It neglected the fact, however, that the documents at the heart of this case were likely to expose government illegality and, possibly, criminal activity. In that circumstance, our security allies would in all likelihood understand that to keep documents disclosing unlawful government behaviour secret would be contrary to Australia's national interest.

Collaery appealed against the decision to keep substantial segments of the evidence against him secret, and to close most of the hearing of his trial. He argued that to withhold relevant evidence and conduct a secret trial breached a fundamental principle underlying the rule of law: that criminal proceedings should be conducted openly, transparently and fairly.

The appeal was conducted before the Full Court of the ACT Supreme Court in October this year. The court agreed with Collaery. In a summary of its judgment, it accepted that the public disclosure of information relating to the truth of the matters at issue may involve a risk of prejudice to national security. However, quite rightly, it doubted that a significant risk to security would materialise given that the events in question had occurred 17 years earlier.

Furthermore, the court stated that if relevant evidence could not be publicly disclosed, there was a very real risk that public confidence in the administration of justice could be damaged. The court made clear its opinion that the open conduct of criminal trials was important because it deterred political prosecutions, allowed the public to scrutinise the actions of prosecutors and permitted the public to properly assess the conduct of accused persons.

This was clearly a win for Collaery. But critical matters remain related to the conduct of these criminal proceedings that illustrate how easily prosecution can slide into persecution in the face of an ideologically driven administration bent upon secrecy and deterrence.

In the past three years, the government has taken every conceivable step to delay and extend the proceedings. Almost 50 Supreme Court hearings have had to be held to discuss technical, procedural points of law. A trial date is still not in sight. Every Supreme Court hearing has meant that Collaery has been required to pay substantial legal costs. With every hearing, he has become more indebted.

In the judgment of the Full Court it emerged, for the first time, that the government had held back affidavits of evidence that had not yet been provided either to the primary Justice or to Collaery and his legal team. This was a straightforward denial of procedural fairness. The Full Court remitted these affidavits for consideration by the primary Justice to determine whether they contain matter that the government has argued should remain secret. Given the absence of notice, the government should be required to pay the costs.

In recent days it has been suggested in legal circles that the government is procuring even more affidavits sworn by ASIS staff to bolster its argument that the actions of the defendants damaged the agency's intelligence-gathering capacities. On this matter ASIS staff would hardly be independent or impartial.

Further, it is legitimate to ask why such affidavits will have been submitted so tardily. One suggestion is that by dropping ever more complex and technical evidence upon the court, together with extrapolated legal arguments, the proceedings will be delayed indefinitely.

If, as is likely, the government claims that the new affidavit evidence should also be secret, a single judge will have to review the new material, while Collaery and his legal team will have no access to it. Another plank of the rule of law will have been fractured to Collaery's detriment.

Perhaps most remarkably of all, the government has submitted that the written judgment of the Full Court of Supreme Court itself should remain secret. So far Collaery has only the one-page summary. In making that submission, the government appears to neither understand nor appreciate that openness and transparency are significant, constituent elements of the rule of law in Australia.

The Collaery case is, perhaps, the most important case ever brought before the Australian courts concerning the extent and limits of freedom of public and political communication in this country. The government's determination to undermine such fundamental democratic rights is a clear indication that it is willing to act ideologically and illiberally rather than in a manner consistent with core principles underlying liberal democracy. Freedom of the press and whistleblower protections are always the first targets of a repressive state.

Spencer Zifcak

Spencer Zifcak is Allan Myers Professor of Law at the Australian Catholic University, a former President of Liberty Victoria, and a Director of the Accountability Round Table.

## The era of tech whistleblowing is here — but will it lead to lasting change?

Janosch Delcker
DW, 6 November 2021

FACEBOOK WHISTLEBLOWER Frances Haugen is the latest in a row of tech insiders who have exposed wrongdoing in the industry. So far, their revelations have had limited legal impact. But change could be coming.

Whistleblower Frances Haugen says she hates attention so much she stopped throwing birthday parties years ago. She never wanted the world to know her name. And the idea of stepping in front of thousands of people gives her anxiety.

And yet, the data scientist decided to give up her anonymity to expose wrongdoing at tech giant Facebook, she told some 20,000 visitors during the

opening night of the WebSummit technology conference this week in Lisbon.

Brittany Kaiser disclosed election manipulation via social media, but the business model is still thriving

"I learned things that, I believe, put lives at jeopardy," Haugen said, detailing how during the nearly two years she worked at the company, she saw how the platform repeatedly prioritized divisive content because it was more profitable.

Facebook, which recently changed the name of its parent company to Meta, has rejected her accusations, arguing that the thousands of internal documents she unearthed paint a false picture of its inner workings. But the revelations have thrown the firm under some of the most intense scrutiny in its 16-year history — and they have prompted new calls to better regulate the tech industry.

The question now is if those calls will lead to lasting change — and that will not be up to whistleblowers but policymakers, Haugen's attorney cautioned.

"Once those disclosures are out there, it is the job of other people to take them and make sure that there is accountability," John Tye, the founder of Washington-based nonprofit Whistleblower Aid, told DW at WebSummit.

**David and Goliath**

Tye's client is the latest former employee who has come forward to expose wrongdoing in the tech industry — despite the risks that come with taking on multibillion corporations, and the prospect of being blacklisted in an industry where networking is important.

Other whistleblowers have included Timnit Gebru, a former AI ethics researcher at Google; Emily Cunningham and Maren Costa, previously employed at Amazon; and former Apple contractor Thomas le Bonniec. Their rising number has led some observers to speak of an "era of tech whistleblowing."

But although their disclosures have, to varying degrees, raised attention beyond the tech world, most of them have fizzled without having any real legal impact.

Frances Haugen's attorney Tye — himself a whistleblower, who in 2014 disclosed electronic surveillance practices by the US State Department — cautioned that before new laws can be passed, a better understanding of the issues needs to develop both among the general public and policymakers.

"It takes time," he said.

**Cambridge Analytica case**

Another tech industry insider who knows a thing or two about this issue is Brittany Kaiser.

Now 35, Kaiser became known in 2018 when she released documents revealing how her former employer, consultancy Cambridge Analytica, had harvested the information of millions of Facebook users to sway elections from Trinidad and Tobago to the United States.

The disclosure set off a global furor, with policymakers around the world demanding an end to the business model.

But three and a half years later, many firms still use similar strategies to profile social media users and influence their voting decisions.

"Instead of one Cambridge Analytica, there are now hundreds of Cambridge Analyticas," Kaiser said in an interview with DW.

And yet, she is convinced that her disclosures have helped boost attention for online privacy and data protection.

"I don't only believe that what I did was worth it, but I think it was essential to take a hold of the public zeitgeist," Kaiser said. "I would do it again — but I would do it earlier."

**Frances Haugen effect?**

Years after Kaiser's revelations brought attention to how voters are profiled online, there are indications that change is coming.

Lawyer and whistleblower John Tye said it will take time for the culture to change

Speaking to journalists during WebSummit, European Commission Vice President Vera Jourova announced that in late November, the EU would release a draft law to introduce tougher rules for online political advertising. "Our democracies are too precious for this 'move fast and break things' attitude," she said.

Referring to the disclosures made by Kaiser and a second whistleblower, Christopher Wylie, she added: "If it wasn't for scandals like Cambridge Analytica, we wouldn't be able to convince people that regulation is necessary."

Others say they believe the momentum created by Frances Haugen's disclosures — whose sheer volume has trumped all previous tech industry leaks — will also help previous revelations have a belated impact.

"I am very thankful that Frances was able to prove a lot of the things that Chris Wylie and I were accusing Facebook of," said Kaiser. "Time will tell if, in the next couple of months or the next year or two, we will be able to implement the kind of changes we need to see."

## Whistleblower payouts aren't enough. Workers need to know they can make a difference

Benjamin van Rooij and Adam Fine
*Los Angeles Times,* 29 November 2021

A former employee received almost $200 million for tips against Deutsche Bank.
(Michael Probst/Associated Press)

LAST MONTH, a former employee of Deutsche Bank hit the jackpot. The U.S. Commodity Futures Trading Commission awarded this publicly unnamed whistleblower almost $200 million for supplying "specific, credible, and timely original information" that aided the agency in its investigation into the illegal rigging of inter-bank interest rates. This was the largest whistleblower payment in history.

The former bank employee now joins a select group of whistleblowers who not only spoke out and were heard by the authorities, but also were rewarded handsomely for their effort. The system worked this time, but far more often those who attempt to blow the whistle are ignored, silenced and punished.

West Point graduate and Gulf War veteran John Kopchinski is also a member of this group. Although he ultimately received $51.5 million for informing authorities about illegal sales practices at Pfizer, Kopchinski's road to fortune was anything but easy.

Working as a sales rep at the pharmaceutical behemoth, he had become increasingly uneasy about how Pfizer pushed him to get doctors to prescribe the nonsteroidal anti-inflammatory drug Bextra for unapproved uses and allegedly at ever higher doses. Kopchinski had tried to alert his superiors about bad practices, but was frustrated that the "ethical line kept moving." He even lost his $125,000-a-year job. And over the course of the six-year legal battle, he almost entirely depleted his retirement savings.

Whistleblowing is not for the faint-hearted. For every Kopchinski, there may be tens of thousands of disgruntled employees who never see justice, let alone compensation for their costs. Brave employees who do speak out can face tremendous repercussions. They risk being demoted, fired or forced to quit under duress.

Consider, for instance, a highly trained nuclear physicist whistleblower who was moved to a broom closet and put to work in the mailroom. Whistleblowers also have a hard time finding new employment as they are blacklisted as "troublemakers." And over the course of the complaint and legal process, they not only risk losing income, but also often face insurmountable legal fees. On top of this comes personal stress, frequently fueling divorce and substance abuse.

Facing such daunting obstacles, it is unlikely that employees become whistleblowers for personal profit. Some may do it for practical reasons, for instance in the hope that they will avoid being prosecuted themselves. Others, like Kopchinski, may simply wish to see justice and make things right. They want the company to end its illegal and damaging practices. This is also the reason our laws provide whistleblower protection. Having employees inform authorities about illicit corporate practices should help uncover major forms of abuse that remain hidden inside. In theory, blowing the whistle should help prevent further wrongdoing.

Unfortunately, there is very little evidence that whistleblowing is effective. Prior to Kopchinski, Pfizer had already faced another whistleblower complaint about illegal sales practices at one of its subsidiaries regarding another drug, Neurontin. Apparently, this earlier case did little to change the corporate strategies.

Studies have demonstrated an uncomfortable truth: In the instances when employees do overcome all obstacles and speak out, it does not necessarily lead to permanent change. A study of the whistleblower provisions in the Sarbanes-Oxley Act, the 2002 law adopted to prevent corporate and accounting scandals in the wake of what happened at Enron and WorldCom, concluded that whistleblowers did not help uncover the vast corporate fraud that resulted in the 2008 financial crisis.

To fix corporate misconduct, we need to look beyond the rare successes of the few whistleblowers who got payouts and media attention. Employees have a crucial role to play, as they have the best view of what happens inside corporate America. But they can only do so if they are empowered within their organizations to call out misbehavior when they see it, even when it concerns powerful executives, key sources of income and deviant behavior that has come to be accepted internally. This requires more than legal protection on paper against retaliation, or the off chance to win a big reward, but deeper corporate reforms. And change has to come not just in the company the complaint addresses but also in its competitors who may engage in similar misconduct.

One option would be to introduce corporate works councils, which exist by law in Germany and France. Through the councils, elected employee representatives have a direct say and approval power in key corporate decisions. Another approach is to empower workers more by halting the ongoing attacks on unionization.

Whistleblowing is one way to attack corporate malfeasance. It can help protect our environment and avert the next Deepwater Horizon oil spill or Volkswagen emissions scandal. And it can defend our privacy and democratic institutions from major tech companies. But for it to succeed, all employees must know that they can come forward without facing retribution and that their reports can lead to real change.

Benjamin van Rooij, a law professor at the University of Amsterdam and University of California Irvine, and Adam Fine, an assistant professor of criminology and criminal justice at Arizona State University, are the authors of the forthcoming book *The Behavioral Code: The Hidden Ways the Law Makes Us Better or Worse.*

## Police whistleblowers face unseen toll

Nicole Carroll
*USA Today,* 12 November 2021, p. 3A

WE GOT a touching email Wednesday from a 30-year veteran of a Massachusetts police force.

He wrote that his distinguished career "was all tarnished … after I reported (an) officer lying on the stand and going to the FBI."

He was responding to an investigative story we published this week, "Behind the Blue Wall," that documented how often police whistleblowers face retaliation for reporting misconduct. They have been threatened, fired, jailed, one was even forcibly admitted to a psychiatric ward.


"I want to personally thank you for bringing this to light," the officer wrote. "You were able to write what I have experienced for the last 6 years. After reading this I took a deep breath and for the first time since this began I feel liberated from the stigma of being a rat, untruthful, discredited."

Police covering for colleagues, and punishing those who don't, isn't new. But with this investigation, we wanted to quantify, for the first time, the extent of the problem and how it impacts the whistleblowers. And, we wanted to find out how officers silence their own.

**What we discovered: "In building a catalog of more than 300 examples from the past decade, reporters found there is no wrongdoing so egregious or clear cut that a whistleblower can feel safe in bringing it to light."**

Investigative reporters for this story
Gina Barton, Matt Doig,
Daphne Duret and Brett Murphy

How did we get these documents?

We tried going to police agencies themselves asking for records on whistleblower complaints. In many cases, no luck. They cited privacy issues and ongoing investigations or just ignored the requests. So, investigative reporter Brett Murphy explains, reporters went for side doors. They asked whistleblowers where else they reported misconduct.

Whistleblowers are "turning to their local human resources division for the city governments, state labor boards, the feds, EEOC (Equal Employment Opportunity Commission), the NLRB (National Labor Relations Board), the attorneys general, state police, anywhere that they thought they could get out from their own department because they were kind of terrified of what was gonna happen to them internally."

So we went to the same places and requested records that included words such as "police" or "sheriff" and "retaliation." Many fought the requests, and we fought back for the public's right to know. We sent reporters to seven states to interview police officers, victims of misconduct and grieving families.

Reporters sent out 400 public records requests and secured tens of thousands of pages of records. They found 300 cases in the past decade where an officer helped expose misconduct — a small window into how the system works. The vast majority of those cases ended with those whistleblowers saying they faced retaliation.

"It doesn't matter how bad the stuff is they expose," Murphy said. "Fellow deputies beating a prisoner who later died; a captain who impregnated a 16-year-old girl and then paid for an abortion; a co-worker bragging about killing an unarmed teenager.

"In each of those, the officers who spoke out were forced out of their departments and branded traitors by fellow officers."

Meanwhile, the team reported, "the officers who lied or stayed silent in support of an accused colleague later secured promotions, overtime and admiration from their peers."

Another finding that sticks with Murphy: How the systems that police created to hold themselves accountable, such as internal affairs, often have been weaponized to hunt down and punish whistleblowers.

**"Whistleblowing is a life sentence," former Chicago undercover narcotics officer Shannon Spalding told our team. She faced death threats and resigned after she exposed corruption that led to dozens of overturned convictions. "I'm an officer without a department. I lost my house. I lost my marriage. It affects you in ways you would never imagine."**

Shannon Spalding

That was striking to investigative reporter Gina Barton, the toll this takes on the whistleblowers.

"I talked to several guys who said they were surveilled — mysterious cars would drive past their house while their wife and kids were outside. Very frightening and intimidating actions," she said. "The police were victims of their own profession and their own agency. These are people who you're supposed to lay your life on the line for, and you're supposed to trust them to have your back no matter what, and then they do these terrible things."

To be sure, not every officer who comes forward faces retaliation. We found cases where departments rewarded whistleblowers.

"In Del City, Oklahoma, a detective who testified against a fellow officer for shooting an unarmed man rose up the ranks to major. In Perth Amboy, New Jersey, an officer who testified against the chief ended up replacing him. There are undoubtedly other departments with similar stories that did not make it into the public record," our story said.

"But for every example of retaliation *USA Today* found, countless others likely remain concealed. That's because the system works. Officers have seen or heard of other careers destroyed over speaking up."

**One Twitter response we got to the story suggested police are no different than any other group in covering for their own: "An institution circles the wagons." Investigative reporter Daphne Duret explains the massive difference.**

"These kinds of retaliations could happen in another profession," she said. "But in law enforcement, when this kind of stuff happens, people die. When (police) encounter people, a police officer can be judge, jury and executioner." And when whistleblowers face retaliation, "it does have a chilling effect" on other officers who might come forward.

That's how this story started. Investigative editor Matt Doig was reading online chats about the murder of George Floyd in Minneapolis. One police officer, Derek Chauvin, kneeled on Floyd's neck for more than nine minutes while he cried for help. Three other officers didn't stop him. Commenters were wondering why.

"One person who said he was a cop said, 'You guys don't understand law enforcement, it's your whole life, not just your professional life, but your personal life'," Doig remembers. "'If you speak out against a brother, your career is over, but your life is over, too. We all go to the same barbecues together. My wife will leave me because all her friends were the wives of cops'."

That got him thinking, how many whistleblowers had faced retaliation? Could we quantify the number, find out how pervasive the problem is?


That's exactly what the team did.

Already, we're hearing talk of creating an independent inspector general to give whistleblowers a safe place to report. We're hearing that agencies are discussing their internal practices, now that the attention is on them.

That's the purpose of investigative journalism. Shine a light. Right a wrong. Hold the powerful accountable.

We're also heartened by officers reaching out with personal stories — and gratitude.

The Massachusetts officer ended his letter with this: "I can not thank you enough. Beers are on me!"

Nicole Carroll is the editor-in-chief of *USA Today*.

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## Pfizer is lobbying to thwart whistleblowers from exposing corporate fraud

**Pfizer is among the Big Pharma companies trying to block legislation strengthening whistleblowers' ability to report corporate fraud.**

Lee Fang

*The Intercept,* 30 November 2021

PFIZER AND OTHER large pharmaceutical corporations are pushing to block legislation that would make it easier for whistleblowers to hold companies liable for corporate fraud.

In the midst of a dizzying legislative environment, with much attention focused on the Build Back Better debate, major corporate interests, including Pfizer, are fighting an update to the False Claims Act, a Civil War-era law that rewards whistleblowers for filing anti-fraud lawsuits against contractors on behalf of the government.

The law has historically returned $67 billion to the government, with whistleblowers successfully helping uncover wrongdoing by military contractors, banks, and pharmaceutical companies.

The law has been particularly thorny for Pfizer. In 2009, Pfizer paid $2.3 billion in criminal and civil fines to settle allegations that the company illegally marketed several drugs for off-label purposes that were specifically not approved by the Food and Drug Administration. The company instructed its marketing team to advertise Bextra, which was approved only for arthritis and menstrual cramps, for acute and surgical pain issues. The lawsuit, brought under the False Claims Act through the actions of six whistleblowers, ended in one of the largest health care fraud settlements in history.


But the law poses far less risk today to companies engaged in criminal behavior. That's because the anti-fraud statute has been severely hampered by a series of federal court decisions that radically expanded the scope of what's known as "materiality." In 2016, the Supreme Court ruled in Universal Health Services v. United States ex rel. Escobar that a fraud lawsuit could be dismissed if the government continued to pay the contractor.

The court reasoned that if the government continues to pay a company despite fraudulent activity, then the fraud is not "material" to the contract. That ruling functionally neutered application of the False Claims Act against many companies that are so large that the government

cannot abruptly sever payments, especially against large health care interests and defense contractors.

Recent court decisions, including cases involving Honeywell and Halliburton, show contractors winning dismissal of fraud cases by simply citing "continued government payments." Last year, a federal district court dismissed a False Claims Act case against engineering company Aecom brought by a whistleblower alleging widespread billing fraud for a $2 billion contract in Afghanistan. Aecom lawyers also cited the government's continued payments to the company. The lawsuit is now under appeal.

What's more, the federal government has taken an active role in discouraging cases. In 2018, the Trump administration's Justice Department issued the "Granston Memo," which encouraged the dismissal of more whistleblower-initiated suits under the False Claims Act.

In October, Attorney General Merrick Garland officially rescinded the "overly restrictive" memo, a move widely seen as designed to promote greater False Claims Act enforcement.

The erosion of the statute has brought together a bipartisan push, led by Senator Chuck Grassley, Republican from Iowa, to update the law to give whistleblowers greater protection against potential industry retaliation and make it more difficult for companies charged with fraud to dismiss cases on procedural grounds.

Chuck Grassley

Earlier this year, as he introduced the legislation, Grassley took to the Senate floor to showcase images of scrapped multibillion Afghanistan War contracts and examples of fraud cases that have escaped accountability because of the judicial constraints placed on the False Claims Act.

"Defendants get away with scalping the taxpayers because some government bureaucrats failed to do their job," thundered the senator. "In my many years of investigating the Department of Defense, it has taught me that a Pentagon bureaucrat is rarely motivated to recognize fraud. That's because the money doesn't come out of their pocket."

The legislation, the False Claims Amendments Act of 2021, adjusts the materiality standard to include instances in which the government made payments despite knowledge of fraud "if other reasons exist" for continuing the contract. The bill also expands the anti-retaliation protections of the law, which currently only cover current whistleblower employees of a company. The bill seeks to prevent an industry from blacklisting former whistleblowers seeking employment.

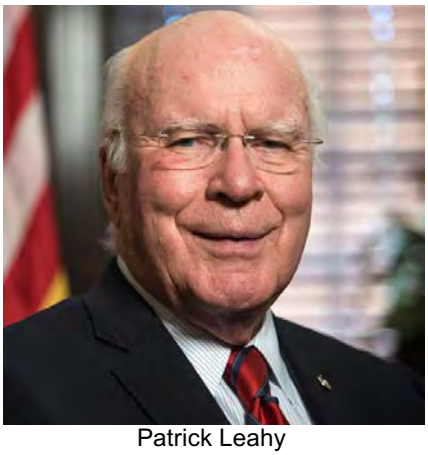
That push has run into a buzzsaw of corporate opposition, some of it disclosed and some of it shrouded from public view. Pfizer hired Hazen Marshall, a former policy director for Senate Minority Leader Mitch McConnell, Republican from Kentucky, to lobby on the issue, along with the law firm Williams & Jensen, a powerhouse that employs an array of former congressional staffers.

Pfizer, which has cast itself as a hero in the fight against Covid-19 and a trustworthy corporate citizen, did not respond to a request for comment.

In an initial test vote, the bill was blocked. In August, Grassley proposed his False Claims Amendments Act as an amendment to the bipartisan infrastructure agreement in the Senate. The bill, however, never reached the floor for a vote because of an objection lodged on behalf of Senate Democrats.

In October, the legislation again found a hearing. Senator Tom Cotton, Republican from Arkansas, attempted to erase most of the bill in a Judiciary Committee meeting. The amendment Cotton proposed sought to strike all substantive lines of the bill except for the first title, which is simply the description of the legislation. During committee debate, Cotton argued that the Supreme Court "made the right decision" in the Escobar case and the "continued payment" standard for materiality. The legislation "potentially could increase health care costs," the senator argued, echoing industry claims that litigation from the False Claims Act would force health care interests to raise prices.

The American Hospital Association reportedly lobbied to delay a vote, but the bill eventually passed 15-7 out of the Senate Judiciary Committee, with the support of Grassley and his main co-sponsor, Senator Patrick Leahy, Democrat from Vermont.



Patrick Leahy

"This is a very concerted lobbying effort that really took our supporters on Capitol Hill by surprise," said Stephen Kohn, a whistleblower attorney with the law firm Kohn, Kohn & Colapinto.

Many of the companies engaged in the lobbying fight have chosen to conceal their efforts through undisclosed third-party groups such as the U.S. Chamber of Commerce, which has made the Grassley bill one of its primary targets for defeat. The chamber does not disclose its membership or which corporations direct its advocacy, but previous reporting suggests companies such as Halliburton, Lockheed Martin, and JPMorgan Chase, among others that have faced False Claims Act violations in the past.

Other trade groups — including the American Hospital Association, the Healthcare Leadership Council, the Pharmaceutical Research and Manufacturers of America, and the American Bankers Association — have lobbied against the bill without disclosing the companies directing their actions.

The known corporate interests lobbying on the Grassley bill include Pfizer, Amgen, AstraZeneca, Merck, and Genentech. These companies

listed the legislation on lobbying disclosures. All five have paid nine-figure settlements over health care fraud brought to light through the False Claims Act.

"Drug companies are notorious for paying kickbacks, giving benefits in exchange for a competitive advantage. Drug companies and health care firms are about 80 percent of the False Claim[s] Act recoveries for a reason," said Kohn.

In the case of Pfizer's record settlement, whistleblowers charged that the company promoted Bextra for uses that were not approved by the FDA, placing patients at risk for heart attack and stroke. The company allegedly paid doctors kickbacks for off-label uses. The False Claims Act, like other "qui tam" laws, awards whistleblowers a portion of the money the government recovers from lawsuits.

"The whole culture of Pfizer is driven by sales, and if you didn't sell drugs illegally, you were not seen as a team player," said John Kopchinski, one of the Pfizer whistleblowers, following the settlement.

The Grassley initiative is championed by a diverse array of watchdog groups over government waste. Taxpayers Against Fraud, the National Whistleblower Center, the Project on Government Oversight, and the Government Accountability Project are among the groups officially supporting the update to the anti-fraud law.

But advocates have expressed confusion over the involvement of several other supposed taxpayer protection organizations. Citizens Against Government Waste and Americans for Tax Reform, two conservative groups that do not disclose donor information, filed a letter to lawmakers urging them to vote down the Grassley measure.

Despite Citizens Against Government Waste's official focus on fighting government waste, the very intent of the False Claims Act, the group's lobbying arm argued in a letter that the bill was not appropriate for inclusion in the infrastructure package because it is "not related to traditional infrastructure" and the bill is not fully "understood by the 95 senators who have not cosponsored" the legislation. Americans for Tax Reform similarly argued that the legislation had not "received proper debate."

Neither Citizens Against Government Waste nor Americans for Tax Reform responded to a request for comment explaining why they have lobbied so aggressively against taxpayer protection legislation and whether any donor interests are involved.

## Frances Haugen exposed a gaping hole in US whistleblower protection

Michael Johnson
*Politico,* 23 November 2021

I was a corporate whistleblower, too. It almost ruined my life.

Frances Haugen

Senator Ed Markey called her a "21st-century American hero" and Senator Amy Klobuchar predicted her whistleblowing would be the "catalyst" for action by Congress to finally reform the social media industry. But under current law, Facebook whistleblower Frances Haugen could still face serious punishment.

If lawmakers want more corporate insiders to reveal misconduct that harms the public, they need to give more than praise. They need to pass laws that strengthen their legal protections.

As it stands now, Haugen faces the prospect that Facebook could haul her into court and bankrupt her. Like most corporate employees, she's subject to a confidentiality agreement. Whistleblower laws permit employees to disclose conduct reasonably believed to be illegal to Congress, law enforcement or government regulators. But disclosures to the media are not similarly protected, raising the possibility that Haugen could be sued for breach of contract.

That's what happened to me.

In 2015, I disclosed to regulators, the media and on my website non-public information about my former employer, Blue Shield of California, that I believed showed the company breaking the law. Blue Shield sued me over my disclosures, claiming they violated my confidentiality agreement. My lawyer tried to get the suit dismissed, but the court ruled that whistleblower protections did not prevent Blue Shield from enforcing the agreement against me for disclosures to the media and on a website.

Since I couldn't afford further litigation, I was forced into a settlement that bars me from disclosing any more about the company and even prohibits me from speaking certain facts about it that have already been reported in the media due to my prior whistleblowing.

Some Facebook critics have expressed hope that Haugen's disclosures about Facebook will lead to a judgment day for social media like the one Big Tobacco faced. That's a fitting analogy: Jeffrey Wigand, one of the most prominent corporate whistleblowers of recent decades, worked through the media to trigger a public reckoning for that industry. Unfortunately for Wigand, even as he succeeded in delivering explosive revelations, his life was upended in the process.

Wigand's former employer, Brown & Williamson, sued him in 1995 for disclosures he made to reporters that allegedly violated his confidentiality agreement. While the company had to drop the lawsuit in 1997 as part of the tobacco industry's $368 billion settlement of the multistate litigation against it, the suit — as well as other retaliation

by the company — took a huge toll on Wigand.

Just the possibility of a lawsuit by the company to enforce its confidentiality agreement led CBS to kill an episode of 60 Minutes featuring an interview with Wigand. The network was set to air the episode when its lawyers warned that it could be sued for inducing Wigand to break his confidentiality agreement, prompting the media powerhouse to bottle up a story alerting the public to a significant public health threat. (CBS did later broadcast the interview, but only after the *Wall Street Journal* had reported much of what Wigand had told 60 Minutes. The drama was memorably portrayed in the 1999 film *The Insider*.)


In the 25 years since Wigand's whistleblowing, Americans have experienced a long string of corporate scandals and misconduct — from the recklessness of big banks that caused the 2008 financial crisis to the massive rigging of car emissions systems by Volkswagen to cheat on pollution tests. As the reach and power of big corporations has swelled, we've seen that matched by the scale of the havoc they can cause. That has led to the adoption of a swath of corporate whistleblower protection laws, including the provisions of the Sarbanes-Oxley Act that protect public company employees, like Haugen, from legal action or other retaliation for disclosures to Congress or regulators. But missing from those laws is protection for disclosures to the media.

Some might ask why such protection is needed at all. Isn't the ability to speak freely to lawmakers or regulators enough? No, not if we want whistleblowers to have the best shot at reforming harmful corporate conduct, which often requires, in addition to informing authorities, applying public pressure. It's hard to imagine that Haugen would have generated nearly as much momentum for reform of Facebook as she has without her disclosures to the media.

Furthermore, unlike corporate whistleblowers, government employees who reveal wrongdoing already have significant protection for media disclosures. The Whistleblower Protection Act prohibits retaliation against federal employees for disclosing wrongdoing to anyone, including the media. The Supreme Court has ruled that government employees at all levels have a First Amendment right to speak to the media about matters of public concern without fear of retaliatory action by their government employers.

The protection government employees enjoy for media disclosures is hardly absolute. Leaks of classified material, for example, are unprotected. But there is a clear recognition in the law that such disclosures are an essential part of whistleblowing. As the Court of Appeals for the Federal Circuit has noted, "The purpose of the Whistleblower Protection Act is to encourage disclosure of wrongdoing to persons who may be in a position to act to remedy it, either directly by management authority, or indirectly as in disclosure to the press."

Fortunately, we're now seeing some movement toward recognizing in law the public value of media whistleblowing by corporate employees — at least with respect to some types of misconduct.

Last month, coincidentally just days after Haugen revealed herself on 60 Minutes as the Facebook whistleblower, California Governor Gavin Newsom signed a bill that prevents employers from prohibiting employees or ex-employees from publicly speaking out about unlawful harassment, discrimination or other mistreatment of employees. Passed at the urging of #MeToo activists and Pinterest whistleblower Ifeoma Ozoma, the law is intended to "empower survivors to demand accountability and prevent future abuses by perpetrators," according to the bill's author, California state Sen. Connie Leyva.

The logic behind the bill, that public exposure forces accountability for current abuses and helps to prevent future ones, applies equally to corporate misconduct that victimizes customers, investors or the public. Imagine if every executive knew that any employee could publicly disclose any action by the company that they reasonably believed was illegal. Would Facebook have acted as it has? At the very least, that kind of environment would force corporate leaders to think harder before breaking the law.

Corporate lobbyists may argue that protecting media disclosures is a bad idea because it would imperil vital business trade secrets. But just as public disclosure of classified government material is excluded from whistleblower protection, certain types of corporate information could similarly be put off limits.

The only purpose served by not protecting media disclosures of illegal corporate wrongdoing is to shield companies from accountability. That's the policy choice our laws currently make. But with public admiration of whistleblowers and skepticism of corporations as high as it is, legislators have an opportunity now to change that.

Corporate whistleblowing, as Frances Haugen has demonstrated, has the potential to do enormous good. But that potential can't be fully realized if every corporate insider contemplating doing what Haugen has done has to be a hero to do it.

Michael Johnson is a former public policy director for Blue Shield of California who was sued for disclosing corporate secrets. He is currently at work on a book about whistleblowing and can be found on Twitter @mjohnsoninLA.

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## 'Welcome to the party': five past tech whistleblowers on the pitfalls of speaking out

**Frances Haugen, the Facebook whistleblower, joined a growing list of Silicon Valley former employees to call out company policies**

Johana Bhuiyan
*The Guardian,* 9 October 2021

WHEN FRANCES HAUGEN revealed she was the Facebook whistleblower who supplied internal documents to Congress and the Wall Street Journal, she joined a growing list of current and former Silicon Valley employees who've come forward to call out

military contracts, racism, sexism, contributions to climate crisis, pay disparities and more in the industry.

Frances Haugen, a former Facebook employee, testifies before Congress on the company's policies.

In the past days, the *Guardian* spoke with five former employees of Amazon, Google, and Pinterest who've spoken out about their companies' policies. The conversations revealed Haugen's experience has been singular in some respects. Few of them received the international praise bestowed upon her. Some of them said they have faced termination, retaliation, harassment and prolonged litigation.

But Haugen is entering a community of whistleblowers that appears tighter than ever, with some working to make it easier for the employees to come forward, through legislation, solidarity funds, and resources.

"Welcome to the party, Frances Haugen," one tweeted.

### Chelsey Glasson

Chelsey Glasson left Google in August 2019, alleging pregnancy discrimination and retaliation. She filed a discrimination lawsuit against the company the following year, and her trial is scheduled for 10 January. Years of litigation against a multibillion-dollar company have been "like a part-time job", according to the mom of two.

After leaving Google, Glasson landed at Facebook. A few months into the new job, she was notified by Facebook's legal department that Google had subpoenaed her employee records, including payroll information, performance evaluations, any complaints she lodged while she was there, and any and all communications referencing Google.

In the time since then, Glasson said, she has had to give Google's legal team access to the most private corners of her life. She's been through multiple rounds of discovery, depositions, and psychiatric analysis. Since Glasson is filing for emotional damages, Google has asked for her medical records including her notes from therapy sessions in which she has discussed her marriage and other personal issues.

"People don't understand when you file a lawsuit as a plaintiff, it really is your whole life that becomes on display," she said. "There are very few limits to what a corporation like Google can ask in discovery. It's very, very intrusive."

In the past year, Glasson, who left Facebook to join real-estate startup Compass, has lent her expertise and experience to Washington state senator Karen Keiser to help push through a bill that extended the time someone could file a pregnancy discrimination claim from six months to a year after experiencing it.

"I really want what I went through to have a purpose and to drive meaningful change for others," she said.

Between the lawsuit, the bill and her advocacy work, Glasson said she's had little time to process the experiences of the past years. "But it's been clear from the get-go that in order for me to heal, I needed to know that I did everything that I could to fight this, and that my fight and my story needed to drive change and be used to hopefully help others," she said.

"If I lose that makes me really scared because I think it sends such a strong signal to Google and other tech companies that fighting hard and aggressively and trying to exhaust plaintiffs like me is the path to go," she added.

Google declined to comment for this story.

### Timnit Gebru

Timnit Gebru wouldn't encourage anyone to be a whistleblower right now. Not with the few protections they're afforded.

Gebru, a respected leader in AI ethics research, was ousted from Google after she refused to retract a research paper she co-authored about the downfalls of a type of AI software that powers the company's search engine.

For months after, she dealt with an onslaught of insults and harassment brimming with misogynoir, hatred aimed at Black women, she said.

She became the target of an online harassment campaign by a slew of anonymous accounts. Academics with large followings but no real ties to her or Google disparaged her and her work, saying she was creating a "toxic environment" and that her supporters were simply "deranged activists". Google's head of research Jeff Dean called her paper subpar.

"Being a Black woman, it was very different," Gebru said. "There's a specific strand of vitriol you deal with."

Gebru said she was exhausted and didn't eat or sleep much for months. After learning what happened to Glasson, she decided against seeking therapy in the months after she said she was fired. (Google maintains Gebru resigned from her position.)

"I was afraid of [being subpoenaed], what were they going to try to say or use," she said. "I don't want them to know anything."

But, she acknowledges she's one of the lucky ones. More than a thousand former colleagues and academics wrote an open letter demanding the company

explain its actions. Gebru was also offered funding from foundations for her next endeavor.

"People's reputations and careers are basically destroyed if they whistleblow like this," she said. "Even if they're not, then a lot of people can't spend all day fighting the companies because they have to figure out how to feed their families and get healthcare. I could take the time to recover a little bit, or try to recover, and deal with what was going on."

Since she first spoke up, there have been important moves toward creating more protections for whistleblowers, Gebru said. But much of it has been shouldered by whistleblowers themselves. Ifeoma Ozoma, a former Pinterest employee who together with Aerica Shimizu Banks, raised pay discrimination issues, helped launch a tech worker handbook. Ozoma and Banks also helped craft the Silenced No More Act, a bill that bars companies from imposing non-disclosure agreements when it comes to workplace or discrimination complaints. Gebru also cited the work Glasson has done in Washington.

"Why do [we] have to be the one to take on the burden?" Gebru asked.

Despite such recent wins for tech whistleblowers, Gebru maintains the payoff isn't worth the personal cost whistleblowers face. "The best case scenario for [employees Google has fired] is they're reinstated," she said. "So why would Google just not do this over and over again? You're actually telling them that this is the best case strategy for them because they tire you out. They can hide, they have piles of money to hire lawyers."

### Aerica Shimizu Banks

After speaking out publicly about gender and racial pay gaps at Pinterest, Aerica Shimizu Banks didn't think she would be able to get a job at a big tech company again. She doesn't think she wants to either.

Banks, along with Ozoma, quit the company in May 2020 after saying they were underpaid and alleged racial discrimination at the company. The company investigated their allegations and found no wrongdoing.

Like a handful of other tech whistleblowers, Banks has spent the year since she exposed her employer trying to make things easier for other people thinking about speaking up about workplace and discrimination. After she helped with the effort to craft the Silenced No More Act, Banks started Shiso, an equity and inclusion consulting company that creates frameworks and systems to help companies follow through on diversity and inclusion pledges.

"I've been saying it's up to us to make meaning out of moments in our lives," Banks said. "So it's kind of funny now to be paid by companies to hold them accountable for their actions when before I was ostracized for it."

Though Banks is happy with the way things have turned out for her personally, she's frustrated that little has changed in the industry and at Pinterest. "Just as there were many people who supported me and allowed me to come forward with what happened at Pinterest, there are also so many people who are responsible for the racism and sexism and retaliation I experienced there," she said. "And very few, if none, of those people have faced any consequences."

In a statement, Pinterest spokesperson Crystal Espinosa said the company has taken "a number of steps" in the past year to make it a safe and equitable workplace including pay transparency and equity and increasing the "percentage of women in leadership" from 25% to 30%. Espinosa also said the company supported the Silenced No More Act and "committed to implementing it regardless if it passed."

"We want every employee to feel safe, championed and empowered to raise any concerns about their work experience," the statement read.

Still, Banks said she'd encourage anyone who knew about something unethical happening in their workplace to come forward, albeit with a back-up plan and preparation.

"The passing of the Silenced No More Act shows there is an understanding from policymakers that workers need protections to tell the truth and to not just tell their own story, but tell the truth that can protect other people," she said. "The appetite for that is growing and the awareness around what our rights as workers really are is growing. I really hope that folks take advantage of this moment and speak out about injustices they see in the workplace."

But for those expecting to expose workplace issues, Banks said to come prepared with documentation, legal advice, and a community of people who have skills that they may not have.

"It was a lot of pressure and it was a lot of anxiety, but despite all of that, it was incredibly worthwhile," Banks said.

### Laurence Berland

Laurence Berland probably would not have spoken out against Google publicly if he wasn't thrust into the spotlight for being fired by the company after years of internal employee activism. "I never wanted to be a public figure," Berland said.

For the type of internal organizing he was doing — which included petitions against the company's contracts with the US Immigration and Customs Enforcement agency (Ice) — he didn't think it made strategic sense to attach his name to it publicly. In fact, Berland is worried about the message conveyed by becoming a public figure for whistleblower work.

"I worry about what it looks like when people get the idea that what's required is heroics," he said. "That one person is going to change all this in some radical way. I worry that people see someone makes this big public figure kind of move and they think of it as 'Well, that person's taken care of it'."

Now that he's become a sort of involuntary whistleblower, Berland says he's starting to question whether he wants to continue to work in the tech industry.

"Part of the issue is you can settle and get a non-disparagement clause and some cash, but it doesn't undo the experience. Even getting reinstated. There's no trauma for the people who perpetrate this, but for those of us on the other side there is."

Berland was among a group known colloquially as the Thanksgiving Four, named for the holiday timing of their termination. Google says Berland and his colleagues Rebecca Rivers, Paul Duke, Sophie Waldman and later Kathryn Spiers were fired for violating company policies such as accessing and distributing documents they did not have permissions for. The now-former employees, who have been vocal either internally or externally about a host of ethical and workplace issues, say they were fired because of their years of activism.

Since then, the National Labor Relations Board has found validity in their complaints and accused Google of illegally spying on and then firing the workers. Over the last few weeks, the NLRB case has played out over open trial, where Google has argued that even if the ex-employees were fired for protesting against the company's work with the Ice, it would be within the company's right.

But for Berland, his part in the case is, at least formally, over. Google agreed to settle with Berland in July for an undisclosed amount and terms. Though he wouldn't go into details, Berland said the process did change his behavior and forced him to think twice about some of what he would do or write.

Berland, like many of those who spoke to the *Guardian,* acknowledges the privileged position he was in when he was fired. He already had a lawyer and through his activism work he had developed a community of people who "seemed up to support" him. Though he didn't set out to be a public whistle-blower, that privilege certainly helps when assessing the risks of coming forward, he said.

"The thing that I would say to people is try and judge your risk by what you can really tolerate," he said. "In a practical sense, what I had that was most important was a savings account. If you can't afford to make rent next month without your paycheck, what pushes you over to taking that risk?"

That's part of why Berland has worked with a group of former and current Google workers to create the co-worker solidarity fund, a non-profit that offers financial, legal and strategic support to folks who want to fight for changes inside their companies.

"We're trying to fundraise from workers, not from big money donors because [we're] trying to show some solidarity across those kinds of income lines," he said.

**Emily Cunningham**

Even though she was fired for it, Emily Cunningham would speak out to demand Amazon do more about climate crisis and stand with warehouse workers "a million times over", she said.

Cunningham is one of two women terminated by Amazon in 2020 after they helped organize shareholder resolutions, sick outs and other acts of employee activism to force the company to reduce its impact on the climate. Cunningham, who is still working with the group, says the year or so since she was fired has been a "transformative" experience.

"My heart is bigger. My imagination of what's possible when tech workers come together to push one of the largest corporations in the world [is bigger]."

Cunningham's continued enthusiasm to take on Amazon is bolstered by her recent victory against the company. Cunningham — who, along with Maren Costa, filed a complaint with the NLRB accusing Amazon of firing them in retaliation of their activism — was preparing for a long and grueling battle against the company. But the emotionally draining process of a public trial she was warned about didn't come to fruition. Amazon settled with the duo, agreeing to pay them back wages and to post notices in offices and warehouses nationwide that say the company is not allowed to fire workers for organizing.

"The legal system is set up to isolate you from other people, because you're not allowed to talk about certain things," said Cunningham. "Maren and I weren't even allowed to talk to each other about our own testimony. It was one of the hardest things I've ever done. But it was so satisfying to win against Amazon, especially because winning against Amazon was a win for all workers."

Amazon spokesperson Jose Negrete said the company "reached an agreement that resolves the legal issues in this case". The company also said it did not admit liability as part of the agreement.

Cunningham also credited the huge support system of people ready to organize climate actions alongside her. When she sent an emotional plea to Amazon employees asking them to sign on a shareholder resolution to require Amazon to release a climate plan, 8,700 obliged. When Cunningham and Costa were threatened with termination for speaking publicly about Amazon, 400 other workers spoke publicly about the company's role in the climate crisis in protest. When Cunningham and Costa were terminated, Tim Bray — a respected engineer and the former vice-president of Amazon's cloud computing group — resigned in protest.

# WBA AGM

## Whistleblowers Australia Annual General Meeting

21st November 2021
via Zoom

1. Meeting opened at 9.05am.
Meeting opened by Cynthia Kardell, President. Minutes taken by Jeannie Berger, Secretary.

2. Attendees: Cynthia Kardell, Jeannie Berger, Brian Martin, Feliks Perera, Michael Cole, Richard Gates, Stacey Higgins, Lynn Simpson, John Stace, Jane Cole, Michael Wynne, Kathryn Kelly, Debbie Locke, Rosemary Greaves and Jack McGlone.

3. Apologies: Karl Pelechowski, Christa Momot, Rhonda Aubert, Carol O'Connor, Geoff Turner, Katrina McLean, Lesley Killen, Alan Smith, Inez Dussuyer and Robina Cosser.

4. Previous Minutes, AGM 2020
Cynthia referred to copies of the draft minutes, published in the January 2020 edition of *The Whistle.* She invited a motion that the minutes be accepted as a true and accurate record of the 2020 AGM, after it was noted that the date given under 9.(2) should have been 21 November 2021, not 22 November.
Proposed: Feliks Perera
Seconded: Richard Gates
Passed

4(1). Business arising (nil)

5. Election of office bearers

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


VOTED PRESIDENT!
But I only went to the loo for 5 minutes!

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

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

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

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

Richard Gates
Stacey Higgins
Debbie Locke
Katrina McLean
John Stace
Geoff Turner

Cynthia thanked everyone for their continuing commitment to the organization, because it is the glue that makes it work.


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

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


7. Treasurer's Report: Feliks Perera

7(1) Feliks tabled a financial statement for 12-month period ending 30 June 2021. A motion was put forward to accept the financial statement.
Moved: Jeannie Berger
Seconded: Michael Cole
Passed

***Feliks' report***
Once again it is my great pleasure to present the accounts for the financial year end to 30th June 2021.

The year ended with an excess of expenditure over income of $256.53. Thanks to the generosity of the membership, the total donations for the year amounted to $1600.00. The association has been blessed with a very generous legacy from the estate of the late Geoff Hook, who donated a sum of $72,000.00. Your president and I have gratefully acknowledged this bequest. This makes the association quite financial for at least the next 10 years. Also, we still have a sum of $9,957.81

brought forward from savings from the past years.

It has been a difficult year for all our members, but the spirit to continue the struggle lives on. The work of the association through the past decades has inspired many people to adopt a stand against corruption prevailing in our society.

Find courage to continue the struggle

Lastly, I wish to express my thanks to the membership for their constant support of the association, with their membership renewals, and their generous donations to keep this important work going.

**ANNUAL ACCOUNTS TO YEAR ENDING 30 JUNE 2021**

| | |
|---|---|
| **INCOME** | |
| MEMBERSHIP | $2675.00 |
| DONATIONS | $1600.00 |
| BANK INTEREST, LESS CHARGES | $3.88 |
| TOTAL | $4278.88 |
| **EXPENDITURE** | |
| WHISTLE PRODUCTION | $4488.41 |
| ANNUAL RETURN | $47.00 |
| TOTAL | $4535.41 |
| EXCESS OF EXPENDITURE OVER INCOME | ($256.53) |

**BALANCE SHEET, 30 JUNE 2021**

| | |
|---|---|
| ACCUMULATED FUND BROUGHT FORWARD | $10214.34 |
| LESS EXCESS OF EXPENDITURE | ($256.53) |
| GEOFF HOOK ESTATE | $72000.00 |
| TOTAL | $81957.81 |
| ASSETS BALANCE AT BANK | $81357.81 |
| DEPOSIT FOR 2021 CONFERENCE | $600.00 |
| **TOTAL** | **$81957.81** |


8. Other Reports

8. (1) **Brian Martin**, *Vice President*

*The Whistle* is still going strong. I encourage anyone to suggest a story or write one yourself to have it published in *The Whistle.* All contributions are welcome.

I have been looking at our WBA website. There is so much content there, 10 years of information including books and references, some broken links, etc. So I have made a few changes by tidying it up and making it look neater.

I'm also looking for a suitable website template for easy access on a mobile phone.


OUR NEWEST COMMITTEE MEMBER, CHICKEN LITTLE, HAS SOME RADICAL NEW CONCEPTS FOR A NEW FEAR-BASED CHURCH MEMBERSHIP GROWTH CAMPAIGN

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

Let me tell you why this last year has been a good one. I'll start by thanking Feliks and Jeannie for their work, which I see play out every time I send out *The Whistle,* as it is rare for any of them to come back marked RTS and that's down to their good management of the financial accounts and members' register. Then there's Michael, with the thoughtful way he has gone about being a contact for the group, sometimes involving others like Brian and me in a four-way exchange if his caller agrees. And Stacey, who has kept our Facebook page interesting and up to date, with Lynn getting in early to "like" a short opinion piece from me. Your encouragement is appreciated, Lynn! We have acquired about 100 more followers in the last year or so, which I'm told is a good thing. And thank you Brian, for going above and beyond this year. I was over the moon when you offered to give the website a makeover and may I say, it's far better than anything I had in mind and refreshingly like no other website — with some great cartoons conjuring up every whistleblower's worst nightmare in deciding whether to blow that whistle! So, you could say the committee has remained true to its roots in helping me to do a better job.

I've received fewer inquiries this year, but as they have started to pick up recently, I've put it down to covid-19. Most calls are still by word of mouth or through the website, with some referrals from formal bodies like the Ombudsman, health professionals and union representatives. I've no reason to think it will change, even though there are hundreds and hundreds of other options on offer out there now. It was not like that back in the nineties when we started. Most still want to talk it through on the phone and some end up starting a conversation that can last years. Some turn out not to be whistleblowers at all but that doesn't matter. They usually turn out to be the supporters every whistleblower deserves. Like the man I caught up with only the other day. He was reporting back on his friend's welfare: a Centrelink whistleblower who tried to expose the Robodebt scandal. He told me they were both quietly satisfied with what they had done. I am too.


In February I made a submission for WBA to a federal inquiry into the management of the Department of Parliamentary Services (DPS), because of what I knew of the ACD13 case. I had been talking to ACD13 or Rhys Williams for more than a year at the

time and was thoroughly familiar with the story and the evidence tendered by both parties in the Supreme Court before His Honour Griffiths J. In his decision Griffiths J described the Public Interest disclosure Act as a "*statute which is largely impenetrable, not only for a lawyer, but even more so for an ordinary member of the public or a person employed in the Commonwealth bureaucracy*." I explained why I thought it was all of that and more, and why the cost to the taxpayer should be weighed against the awful grief it caused ACD13 and the damage done to the DPS by allowing it, like government, to operate outside the law.

In April I made a submission for WBA to the Independent National Security Legal Monitor's review of the Witness J matter aka "Alan Johns" (a pseudonym). Alan Johns was charged, arraigned, convicted on a plea of guilty, sentenced and served his sentence in total secrecy after unlawfully disclosing secret information, under the National Security Information (Criminal and Civil Proceedings) Act 2004 (NSI act). This is wrong at every level. I wanted his conviction quashed and Alan Johns compensated.

Witness J's Operational Service Medal

I also wanted the NSI laws changed, so that the person required to designate which information was "sensitive" and/or "secret" in a national security sense had to account for their decision within a framework that set out what the national interest is not. We have many examples of what it "is not" in the political prosecutions of Witness K, David McBride and Bernard Collaery. For reasons that remain unknown, the committee decided not to post our submission on their website.

Feliks has told you one of our members, Geoff Hook, remembered us in his will, so let me tell you a little bit about Geoff. He telephoned me out of the blue on 21 March 2018. He wanted to know what WBA did. I began explaining but got side-tracked, saying why I was so pleased to have a supporter ringing us. We quickly got off topic and onto the business of righting the wrongs of the world. We had a marvellous two, three hours on the phone, which we both later agreed was a real tonic. We were in touch from time to time, swapping ideas and opinions. I was looking forward to having him around us for a very long time, so I was sad to know he had died. We never got around to finding out anything about each other, as we had too much to talk about. Which is how I'll remember him, committed, interested and interesting, and caring about the important things in life. I have since learnt he was an engineer and a very good cyclist. But the fact he remembered us at all is a lovely, lovely thing and very much in keeping with the Geoff I was getting to know. I have thanked him in the only way open to me now, in my thoughts and I've promised not to waste a penny.

This year Tehran-born artist Hoda Afshar won the Ramsay Art Award's people's choice with a piece that celebrates nine "Agonistes"—meaning people "involved in a struggle."


Hoda Afshar

It was created from 3D printouts which are now museum pieces. They include our Karen Burgess, Witness K's lawyer Bernard Collaery, detention workers appalled by the treatment of asylum seekers, and others. The exhibition opened on 21 March 2021 at Melbourne's St Paul's Cathedral, before moving to Adelaide. Hoda Afshar was motivated by seeing how far *we had allowed ourselves* to move away from what true democracy is and was. Thank you, Karen for taking part. I know it has been an inspiration for you as well.

Some of the whistleblowing this year has been quite significant. I'll mention just three domestic issues. The NSW government's workers compensation agency, iCare, has been caught out underpaying 53,000 of its injured workers to the tune of $38 million over six years.


Chris McCann, iCare whistleblower

In another matter, the government has been using a shell company to hide its rail costs to improve its Budget bottom line over four years. The Auditor-General has yet to decide whether it was deliberate. On the other side of the whistleblowing ledger is Queensland's watchdog, the Crime and Corruption Commission, which is under fire for trying to protect former Logan Shire CEO and whistleblower Sharon Kelsey.

Nationally, Witness K was given a suspended sentence with a 12-month good behaviour bond. Now the call is for him to be pardoned. On 6 October Bernard Collaery successfully overturned a ruling, by the former Attorney General Christian Porter, designed to keep the trial securely behind closed doors. He was back in court in the last week of October to deal with a new tranche of evidence, which the current Attorney General Michaelia Cash wants to keep secret even from him. On 9 August 2021 Richard Boyle's case was deferred until late next year, as was David McBride's on 27 August. This means though that both cases have been kicked off into the long grass until after the next election.

This year has also marked more than a decade in detention in the Ecuadorian Embassy and Belmarsh Prison for Julian Assange. The US appeal against Judge Baraitser's refusal on 4 January

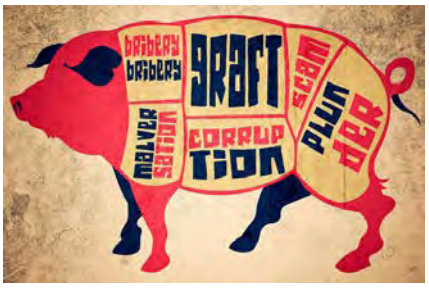
to allow his extradition on health grounds was heard late October. There's good evidence the US plans to keep him in prison in what his partner calls "prison by process" given that whoever loses will doubtless appeal the decision to the UK's highest court. His legal team says it might take years.

In the United States of America two very large anonymous leaks or data dumps including the Facebook Papers, and the Pandora Papers Global Project which is being managed by the International Consortium of Investigative Journalists (ICIJ), have demonstrated just how valuable whistleblowing has become since Julian Assange worked out how to tip the balance in favour of the common good — as the ICIJ was his brainchild.

Frances Haugen, former Facebook engineer and product manager, subsequently decided to reveal her identity live on A Current Affair. She wanted to explain the significance of the papers, directly to the US Congress, the EU Parliament and any other lawmaker wanting to rein in Facebook, knowing her leak has the potential to build truly global reform. Not so with the Pandora Papers, but it's clear the tax authorities around the world are poring over them, some of which involve hundreds of our own citizens. They've both generated a huge number of podcasts, whodunits and commentary designed to drive home the need for reform domestically and internationally. It's a great model that needs to be used more widely here in Australia. It keeps the whistleblower safe and forces lawmakers to take their claims more seriously.

Stories based on the Pandora Papers

But just to give you a taste of what a whistleblower is currently up against. The former NSW premier and the prime minister each say we the punters can be relied upon to shrug pork barrelling off as the norm, in the lazy hope some pork will come our way the next time round. It's really distressing to see them so brazenly confident that we'll cop it sweet, believing we have no alternative.




Clearly though, some don't buy it as it's been a very good year for whistleblowing. Which is why I say, keep those big leaks coming, so we can all get better at using them for real change.

9. Other Business.
A. Motions put forward by member Robina Cosser.

1. That WBA use the Hook Bequest funds to update the website.
2. That WBA use the Hook Bequest funds to publish a book of whistleblower stories.
3. That WBA use the Hook Bequest funds to update the website and publish a book of whistleblower stories.

Jeannie informed the meeting Robina had resigned yesterday. Robina did not say what to do with the three motions. Brian noted that rule 8 of the Constitution required a member to give notice being not less than a month. Jeannie said we'd never required notice. Cynthia agreed, saying she was inclined not to deal with the motions further. But nevertheless, she urged those present to accept that the fairer thing for all reasons would be to proceed as if Robina remained a member. She called for someone to propose/second the motions. Brian added that proposers/seconders need not vote for the motions. Cynthia explained, for the benefit of those who would not have known, that these issues had been the subject of discussion in another place. She went through her reasons for not supporting the motions, citing Brian's recent upgrade of the website and his earlier advice on a raft of issues involved in producing a book. The meeting took it to a vote.

First Motion Proposed: Debbie Locke
Seconded: Lynn Simpson
Motion not carried.

Second Motion Proposed: Debbie Locke
Seconded: Lynn Simpson
Motion not carried.

The third motion was abandoned with the agreement of the meeting due to the first two not being carried.

B. Motions put forward by member Feliks Perera:

1. That WBA bears the full venue costs including catering of the conference and AGM 2022 as a one-off.
2. That WBA bears the full venue costs including catering of the members attending the AGM from 2022 while it remains financially viable to do so.

Feliks explained we could in effect use the funds we had not spent this and last year to pay for the AGM in 2022 as a one-off. He hoped that routinely funding the AGM from 2022, while we could, would encourage more of the members to attend it as well as the conference. The meeting took it to the vote.

First Motion Proposed: Feliks Perera
Seconded: Jeannie Berger
Motion Passed.

Second Motion Proposed: Feliks Perera
Seconded: Michael Cole
Motion Passed.


10. Conference/AGM weekend 2022 is to be held at the Uniting Venues in Nth Parramatta 19th to 20th November 2022.

**11. AGM closed 10.55AM**

## Whistleblowers Australia contacts

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*Website* http://www.whistleblowers.org.au/
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Thanks to Cynthia Kardell and Lynn Simpson for proofreading.

## Whistleblowing troubles

I bought a wooden whistle.
But it wooden whistle.

So I bought a steel whistle.
But it steel wooden whistle.

So I bought a lead whistle.
But it steel wooden lead me whistle.

## 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. Use your surname/membership as the reference.

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