

*“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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Bradley Manning, US military whistleblower — see pages 3–5

### Ex-detective hopes stand vs. corruption inspires others

Pauline Askin  
Reuters, 18 August 2010

FORMER Australian detective Deborah Locke's life became a living nightmare after she blew the cover on police corruption but the steely 46-year-old says it was worthwhile if people remember her and follow her lead.

It's been 14 years since Locke was discharged "medically unfit" from the police force in the state of New South Wales and more than 15 years since she went to authorities to give details of a "one-in-all-in" culture of bribery among police colleagues.



Deborah Locke

But Locke said she was determined to ensure that her stand against corruption would not be forgotten and would help give others the strength to do the right thing.

This year she has published the second edition of her book *Watching the Detectives* and was also portrayed in a new series of the popular Australian TV crime drama *Underbelly* set in 1989 in Sydney's red light district, Kings Cross.

"I don't regret what I did. I can sleep at night," Locke told Reuters in a recent interview.

Locke joined the NSW police force with high hopes in 1984, but quickly

realized it was hard to slot into such a male dominated culture.

After leaving uniform policing to become a plain clothes detective, she found she could not accept the "one-in-all-in" culture over taking bribes.

Hard-drinking detectives regularly mingled with criminals and corruption was seen by some as part of daily policing to keep strip clubs owners, pimps, and drug lords under control.

In 1995 Locke blew the whistle on corruption, with her evidence leading to a Royal Commission that ultimately produced a wide range of reforms within the police force.

But it also led to death threats against Locke who spiralled out of control on alcohol and depression. In 1996 she was discharged from the service "medically unfit."

Her critics say she was angry and jealous of her male colleagues but she denies that, saying the male officers were threatened by the rise of women in the police force.

"You had all these men that had never worked with women before who had been around for 20 or 30 years and they were pretty angry that the culture of the police stations was changing," said Locke.

But she admits that she did not foresee how hard her life would become after she went public.

"I was looking over my shoulder all the time. The scary thing was I was scared of the police," said Locke.

"At the time I didn't believe they could be so vicious and angry but, then again, they had a lot of money and their careers at stake. Because I was an honest cop my career ended."

Locke hopes she has made the way easier for women in the police force.

"It's not as out of control as it was then," she said. "But since the latest *Underbelly* series started, about 15 current police women have contacted me so there are instances where women are still having a hard time."

Locke now works for a women's refuge movement providing care and support for women and children escaping domestic violence.

### Fired, but no charges: man accused of being nuclear whistleblower

Mark Hughes  
*The Independent*  
24 August 2010

A BRITISH customs investigator who was accused of leaking classified information about an international nuclear smuggling ring to two US journalists has been dismissed from his job, despite being told that he will not face prosecution under the Official Secrets Act, it was announced yesterday.

Atif Amin, 41, claimed to have discovered evidence in 2000 that Abdul Qadeer Khan, a Pakistani scientist responsible for developing the country's nuclear arsenal, was involved in establishing Libya's nuclear programme. Mr Amin claimed that he told MI5 and the CIA of his concerns but, he said, they ignored his evidence and told him to drop his inquiries. The Libyan programme and its involvement with Mr Khan was not exposed and halted until 2003.

Mr Amin's claims were revealed in a 2007 book published in the US called *America and the Islamic Bomb: The Deadly Compromise*. Due to the confidential nature of the material in the book it was suspected Mr Amin had leaked the information to the book's authors, David Armstrong and Joseph Trento — something all three deny.



Atif Amin

The book quoted from an official document which reported Mr Amin as telling colleagues: "They knew exactly what was going on all the time. If

they'd wanted to, they could have blown the whistle on this long ago."

Shortly after the book was published, Mr Amin appeared on the US television news show NBC to discuss its contents. When he arrived back in Britain he mentioned the appearance to a colleague, who informed superiors and, in November that year, the Independent Police Complaints Commission (IPCC) was asked to investigate.

During the two-year investigation Mr Amin was arrested, his home was searched and he was interviewed four times. IPCC investigators found the book contained information which directly related to Mr Amin's role in the inquiry that had not been disclosed before, and passed a file to prosecutors. But in December last year, the Crown Prosecution Service decided there was not enough evidence to prosecute Mr Amin. With the criminal investigation unable to proceed, Her Majesty's Revenue and Customs (HMRC), Mr Amin's employer, began disciplinary proceedings against him.

The allegation was that as an HMRC employee he was in breach of his position when he appeared on the television show and made "unauthorised disclosures of highly sensitive material." Last month he was dismissed from his £55,000-a-year job.

Mr Amin and the authors maintain he was not the source used, and that his name had merely been mentioned in other material. He maintains that his appearance on NBC did not break the rules of his employment.

Speaking to *The Independent* yesterday, Mr Amin said: "The only thing I have done is to give an impromptu interview on matters that were already in the public domain. Because of that I have been subjected to a lengthy investigation which was akin to using a sledgehammer to crack a nut. The investigation had no evidence against me, but yet I have now lost a 17-year career. I have been absolutely shafted. Yes my name was in the book, but I cannot stop people writing things about me."

Joseph Trento, the book's co-author, added: "It is absolutely outrageous that this man has been dismissed from his job for supposedly helping us to write a book. We never even met Atif Amin until after the book was

published. He was not our source. But the even bigger outrage is that his evidence about the Khan network was ignored and therefore it was allowed to operate for a further three years."

Mr Trento claims he emailed the IPCC, informing them Mr Amin was not the source of the investigation but did not travel to meet investigators after taking legal advice. An HMRC spokesman said: "We can confirm that following disciplinary procedures Atif Amin was dismissed for gross misconduct by the department in July 2010."

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## How the military destroys the lives of soldiers who try to tell the truth

**Bradley Manning is not the first military whistleblower to have his life ruined. The military is infamous for trying to silence soldiers who speak out against the war.**

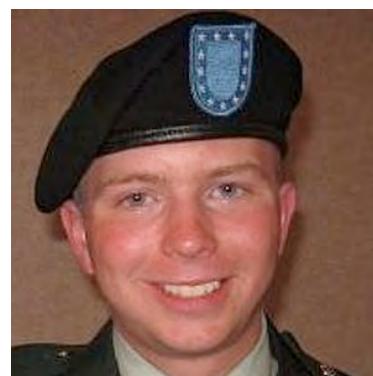
Justine Sharrock  
AlterNet.org  
11 August 2010

LAST week, Representative Mike Rogers called for the execution of military whistleblower, Private Bradley Manning. His crime? Sharing the "Collateral Murder" video and the classified Afghanistan "war logs" with Wikileaks, which exposed the truth behind the failing war in Afghanistan, Pakistan's cooperation with the Taliban, and potential war crimes. The 22-year-old Army intelligence analyst said he felt it was "important that it gets out ... I feel, for some bizarre reason ... it might actually change something." He is currently in jail at Quantico, on suicide watch, and is facing up to 52 years in prison for exposing information the American public has the right to know.

"The government is engaging in selective prosecution to ensure that employees keep their mouths shut," says Stephen Khon, a lawyer specializing in whistleblowing cases. "All of a sudden the whistleblower becomes public enemy number one. There is no proportionality."

Manning leaked the information anonymously with the assurance that his name would never be released, but all the same he has been accused of

seeking his "15 minutes of fame." Manning specifically said, "I just want the material out there ... I don't want to be a part of it." His name only became known after hacker-turned-reporter Adrian Lamo ratted him out. Before going to Wikileaks, Manning tried, unsuccessfully, to report the information to his officer. He explained that he "immediately took that information and ran to the officer to explain what was going on ... he didn't want to hear any of it ... he told me to shut up and explain how we could assist the FPs in finding more detainees ..." Yet now he is being denounced for not handling the matter internally.



Bradley Manning

Regardless of whether he is found guilty and sentenced to prison, Manning's life will be irreparably destroyed. "If you are deemed a whistleblower in the Army, there is a very good chance of it ruining not only your career but your life," says David Debatto, a U.S. Army counterintelligence special agent who saw several such instances while serving in Iraq in 2003. Manning was already "pending discharge" when he made the complaints, but now, even if he isn't charged, he will most likely be dishonorably discharged. This will mean a loss of all benefits and difficulty getting a decent civilian job, a bank loan or a lease.

Manning is not the first such military whistleblower to face serious repercussions and retaliation; not just from the military, but from the government, fellow soldiers, friends back home and even the general public and the media. The military is infamous for trying to silence soldiers who speak out against the war. Each whistleblower who is publicly denounced and

punished acts as a prohibitive warning silencing any other soldiers contemplating coming forward.

Blowing the whistle while overseas is particularly risky. You are completely under the control of the military. As of mid-2008, almost 3,000 soldiers have filed complaints with the Inspector General's office for retaliation against them when they tried to expose information. That number does not include the multitudes who were too intimidated — or simply too despondent — to make reports. At their own discretion, commanders can enact “non-judicial punishments,” such as imposing a diet of bread and water, enforcing longer work hours, and requiring intensive physical activity like hauling sandbags or running for hours in full gear. Soldiers can refuse such punishment, but the other option is trial by court martial for the alleged offense.

There have been reports of soldiers being physically threatened and put in dangerous situations without their weapons. There is fear of being “suicided” or “accidentally” killed by friendly fire. Some soldiers have ended up in psychiatric hospitals. In June 2003, Sergeant Frank Ford, working as a counterintelligence agent in the California National Guard 223rd Military Intelligence battalion, reported five instances of torture and detainee abuse that he witnessed. They included asphyxiation, mock executions, lit cigarettes being forced into a detainee's ears, and arms being pulled out of sockets.



Frank Ford

Upon hearing the complaint, his commanding officer, Captain Victor Artiga, said he was delusional and ordered a psychiatric examination. When the psychiatrist assessed Ford as mentally healthy, Artiga stormed down there and told her it was a military intelligence issue and that the form had to be changed immediately. Thirty-six

hours later, Ford was on a gurney getting shipped out on a flight to a military mental ward in Germany. The psychiatrist, who ended up accompanying him, apologized and explained that she thought it was safer for him to get off the base.

All of the evaluations at the various military psychiatric wards Ford was sent to during the next several months deemed him mentally stable. Eight months after blowing the whistle, he was honorably discharged. Although this is not a common occurrence by any means, there are numerous accounts of soldiers being sent for psychological assessments for combat stress after they blew the whistle. Some have spent months in mental wards and years trying to clear their records.

In the vast majority of these cases, the soldiers first reported abuse to their commanders, and were ignored. Take the infamous Abu Ghraib detainee abuse scandal, which was leaked through graphic photographs showing the prisoners stacked in naked pyramids, leashed like dogs, and most iconic, the hooded man standing on a box with his arms outstretched attached to electrodes and leashed like a dog. Numerous soldiers had filed complaints with their officers long before the whistleblower, Joe Darby, handed in the photos, which were eventually leaked to the press. Stephen Hubbard reported the abuse to his squad leader, Robert Elliot, but was told that without the photographic evidence in hand, there was not enough proof. It took Darby going outside the chain of command, via the military's Criminal Investigative Division (CID), to get any response.

Even so, when the military launched their official investigation, soldiers who cooperated by coming forward with information about the abuse were retaliated against. Sergeant Samuel Provance had known about the ongoing abuse, but had been too scared to report it before the photos were released to the press, and figured the reports would go nowhere. Once the CID asked soldiers for more information, he thought it was safe to come forward. But his frankness earned him a demotion, threats of jail time, and endless humiliation and harassment. He lost his security clearance because,

as they said, his “reliability and trustworthiness” had been “brought into question.” During briefings, officers made an example of him, telling soldiers he was a liar and a traitor.

One soldier, Andrew Duffy, who worked at Abu Ghraib long after the abuse had supposedly ended, made numerous complaints about abuse and even wrongful deaths to his officers and the Inspector General's office, yet he was met with silence. “If you complained about someone in that type of environment, they would kick your ass, and there's no way to be protected over there,” Duffy explains. “You would be screwed. And nothing would even come of it.”

Things certainly don't stop once soldiers leave the military. Lieutenant Commander Matthew Diaz, a Navy JAG officer, was imprisoned for leaking the names of the Guantanamo detainees. Despite the Supreme Court ruling that granted detainees habeas corpus rights, the military was still denying lawyers' requests for the names that were needed to actually file cases. So, in 2005, on the last night of his tour, Diaz anonymously mailed a list of the names in a Valentine's Day card to a lawyer at the Center for Constitutional Rights. The lawyer gave the list to the judge's clerk who was working on her case, who in turn handed them over to the Justice Department, thus initiating an FBI investigation. Diaz was court-martialed, convicted on four felony counts, and sentenced to six months in a Navy brig. He lost his law license, and with a felony conviction on his record, faced a litany of problems, including being blocked from housing, loans, employment, and, in some states, even voting. When he was accepted to teach at a New York City public school, the board of education denied him the job at the last minute when he failed the background check.

The Abu Ghraib whistleblower, Joe Darby, had to go into a quasi-witness protection program once he returned home. A security assessment of his hometown, Cumberland, Maryland, where most of his Army Reserve unit was from, deemed it too dangerous for him to return. “The overall threat of harassment or criminal activity to Darby is imminent,” read the report. His house was too close to the road; he

could easily be shot. It wasn't the military, but people back home who were out to get him.

Linda Comer, one of the locals the CID interviewed for its security assessment, told me. "We do justice in our own way. No one would rent to him or sell him a house. If they did, someone would go destroy it. I'm not sure if it will ever be safe for him to come back." To some of his old neighbors, what Joe Darby did was worse than the abuse. Just as with Manning, his personal character was dragged through the mud. He has been publicly called a rat, a traitor, un-American and unpatriotic.



Joe Darby

Like Manning, Darby was criticized for not following proper protocol in reporting the abuse. While Darby is blamed for publicly releasing the information, most people don't realize that it was Bill Lawson, the uncle of one of the accused soldiers, who actually leaked the photos to the press.

With so many examples about retaliation against military whistleblowers, Private Bradley Manning no doubt knew what he was up against. Even if he didn't think it would go as far as court martial — or even the death penalty — he knew what would happen to him. All the same he was willing to take that risk. For that, he is a hero.

## Europe, US take different approaches to whistleblowing

Michael Knigge  
*Deutsche Welle*  
5 September 2010

THE ongoing wrangling over the methods of Wikileaks has led to a broader debate about whistleblowing. While it has been an accepted practice in the United States for a long time, that's not the case in Europe.

When Germans want to talk about whistleblowing they quickly run into a linguistic problem: there is no German word for it. In order to describe a whistleblower in their own language Germans have to resort to a negatively connoted word like informant or paraphrase it some other way. That's why Germans often simply use the English word to talk about whistleblowing.

The lack of a proper name for the practice is indicative of the role and acceptance of whistleblowing in Germany.

"In Germany there are no laws to protect whistleblowers or to serve as an incentive for whistleblowing," Johannes Ludwig, a professor at Hamburg's University of Applied Sciences and a board member of Germany's Whistleblower Netzwerk, told *Deutsche Welle*. "In the US there is both."

The reasons why whistleblowing plays a much smaller role in Germany than in the US are historical and also shaped by mentality, argues Ludwig. The US was founded by people that didn't want to accept the traditional hierarchical structures in Europe.

"And that's why in the US everything that has to do with the state and government has to work effectively and serve a clear purpose. The Americans have a much looser understanding of government and state and their relation to government and business is much less bureaucratic and authoritarian than ours."

What's more, argues Ludwig, democracy in Germany, even compared to other European countries has a relatively short history.

"And that's why it is understandable that rules or laws about whistleblowing, which actually only serve the

purpose to improve things, are not as developed in Germany as they are in other countries."

### Protecting whistleblowers since the civil war

By comparison, the first legal incentive for whistleblowing in the US dates back to the civil war. The False Claims act, which was passed by Congress in 1863, was a reaction by the federal government to deal with fraud. Basically it promised a reward to whistleblowers who could prove that the government was being defrauded.

The Enron scandal led to a further tightening of whistleblower laws. With some minor changes that law is still in effect today and remains an important factor in recognizing fraud, says Alexander Dyck, a finance professor and whistleblowing expert at the Rotman School of Management at the University of Toronto.

"If someone brings information to light through whistleblowing action and the government is being defrauded and the action is successfully pursued then that whistleblower is entitled to between 15 and 30 percent of the money the government collects as a result of stopping this wrongdoing," he told *Deutsche Welle*.

### Tightening whistleblower protection through Sarbanes-Oxley

More recently, the US government improved protection for whistleblowers through the so-called Sarbanes-Oxley Act of 2002 as a reaction to the Enron and other corporate scandals. It also opened up the False Claims Act to private corporations.



"Corporations effectively have to have a whistleblowing policy, have to set up a hotline, whereby if there are employees or others in the firm who think there is some wrongdoing, you can

make the phone calls and allegations and that information is then communicated to folks within the firm that then follow up on this,” explains Dyck.

The purpose of all those and additional measures that were instituted in March is to provide incentives for whistleblowers to speak up about wrongdoings they know about and to protect them as much as possible from retribution for doing it.

### **Less stringent laws, more formal channels in Europe**

In Europe, not just in Germany, many of these mechanisms simply don't exist yet.

Major US companies are required to have instituted protections for whistleblowers “One possible reason for less whistleblowing in Europe is that many of the activities that whistleblowing might bring to light wouldn't be illegal in many European countries,” says Dyck. “Some things of corporate wrongdoing would be illegal in the US, but would not be illegal in Europe, so whistleblowing on them wouldn't be very effective.”

However, Dyck also offers a more positive explanation of why whistleblowing is less of a phenomenon in Europe than in the US.

“There are more formal channels in Europe for employees who are concerned about wrongdoing to bring that information to light without going through a whistleblowing channel,” he notes. “The existence of works councils, worker representatives on boards provide another channel for that sort of information to percolate up to the highest level of decision making that wouldn't require going through a formal whistleblowing channel.”

While it might take some time until European countries institute an Office of the Whistleblower Protection Program like it exists within the US Department of Labor, the experts agree that Europe needs to provide more incentives for whistleblowers to speak out if it wants to get serious about improving corporate governance both in the business and governmental sector.

## **Wikileaks and Internet disclosures**

Article 19  
10 September 2010

Article 19 is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees free speech.

THE current debate around Wikileaks highlights the potential of the internet to make previously secret information of public interest widely available. Article 19 calls for governments to improve their regimes for public access to information, refrain from punishing Wikileaks and other sites that are releasing information in the public interest, and to protect and encourage whistleblowers.

Article 19 welcomes the use of the internet by new and established organisations as a mechanism to expand and democratise the availability of sources of information. We believe that this represents a powerful extension of the media's role to receive information from confidential sources and make it available to the public.

The recent debate around Wikileaks and the disclosure of secret US government documents related to the Afghan War Diary and Baghdad airstrike video underscores the need for strong legal rights to be in place in all countries for the public to seek, receive and impart information as guaranteed by the Universal Declaration of Human Rights and other international, regional and national human rights instruments. This includes recognition of the right to information, protection of whistleblowers, and facilitating the media's ability to obtain and publish information without barriers.

It should be recognised that Wikileaks is not the only site on the Internet that provides a forum for whistleblowers. Other sites, including Cryptome.com and FAS.org, have provided an important public service making information of this type available for many years.

Article 19 believes that the Johannesburg Principles on National

Security, Freedom of Expression and Access to Information, developed by a group of experts and endorsed by the UN Human Rights Commission, is a proper starting point for evaluating concerns related to national security information in the Wikileaks debate. Moreover, we identified the following issues that must be considered in ensuring that the public's rights under international law are respected.

### **1. Ensuring the public's right to information**

It is well established that the right of the public to information held by government bodies is essential in ensuring democracy. Over 90 countries have adopted laws that guarantee that right and it has been recognised in international agreements including the UN Convention against Corruption, the UNECE Convention on Access to Information, Public Participation, and Access to Justice in Environmental Matters, and by many international bodies including the UN, Council of Europe, African Union and the Organisation for American States.

However, while there has been a significant increase in laws and other instruments guaranteeing the public's right to information around the world in recent years, access to information is still inadequate in many countries, even those such as the United States with its long history of right to information. This is particularly a problem in the area of information classified as “state secrets.”

Under international law, governments must show that any restrictions on access to information are prescribed by law and necessary in a democratic society to protect a national security interest. Limits on access to information should only apply to information that governments can demonstrate would cause a specific and articulated harm.

The rules should not be used to hide other interests. Indeed, the existing US rules on secrecy prohibit classifying information about crimes and as a means to prevent embarrassment. Those rules are ignored far too often.

A number of military logs in the Afghan War Diary and the Baghdad airstrike video footage appear to demonstrate attacks on civilians by

coalition forces which might amount to violation of the Fourth Geneva Convention. Full official disclosure of information about the allegations of ill treatment of civilians by the coalition forces in Afghanistan and Iraq would allow light to be shed on what has occurred. It would also enable a transparent and fair judicial review. Hence, the Baghdad video and much of the material in the Afghanistan War Diary should have been subject to mandatory disclosure under access to information laws in the respective countries of coalition governments, where, again, the overall public interest should trump secrecy exceptions.

## 2. Prosecution of web sites for releasing national security information

There has been considerable discussion about the possible prosecution of Wikileaks founder Julian Assange and other Wikileaks activists under state secrets or espionage legislation in the United States or other countries. Article 19 believes that this would be an improper use of these laws and urges all governments to refrain from taking this step.

The statements of defence and state officials, calling for or warning of prosecution, might amount to censorship of media at a time and on issues – the war in Iraq and Afghanistan – where transparency and the public right to know should govern the government's relationships with the media and the public.

Moreover, it is a well established principle that public authorities bear sole responsibility for protecting the confidentiality of official information. Other persons and entities, including Wikileaks and journalists, should never be subject to liability for publishing leaked information, unless it was obtained through fraud or another crime.

## 3. Protection of whistleblowers

Article 19 also believes that those who provide information to Wikileaks should not be prosecuted if there is a strong public interest in the release of the information.

Officials who act as whistleblowers and release information in the public

interest without authorisation should not be prosecuted for releasing information that reveals crimes, abuses, mismanagement and other important issues in the public interest. Although we recognise that civil servants may legitimately be placed under obligations of secrecy, these should be limited by their obligation to serve the overall public interest. Anyone disclosing classified information should benefit from a public interest defence whereby, even if disclosure of the information would cause harm to a protected interest, no liability should ensue if the benefits of disclosure outweigh the harm. Instead, there should be strong legal protections and structures to facilitate disclosure.

Countries should adopt comprehensive whistleblowing laws which apply to the public and private sector and apply in national security cases. Secrets laws should recognise that whistleblowers should be protected from prosecution and should include public interest exemptions for revealing information such as human rights abuses and corruption.

Countries should also enact laws based on international standards protecting journalists from revealing their confidential sources and materials and those laws should apply to every person who is engaged in the business of making information available to the public.

## 4. Ethical obligations of new media

Article 19 believes that new media – including Wikileaks and similar sites, should follow good ethical practices to ensure that the information made available is accurate, fairly presented and does not substantially harm other persons. While such ethical codes have not yet been developed for new media, we believe that existing journalistic codes provide a useful basis from which to begin.

Sites such as Wikileaks should also recognise that technical protections to protect the anonymity of sources only have limited effectiveness. If the whistleblower is identified through other means, they can face serious employment and legal sanctions and even physical danger.

Article 19 is not qualified to take a position on whether the release of all

of the Afghan documents by Wikileaks was appropriate in these terms. To date, no credible information has been made public that links the release of the information to the harm of any individual.



## Recommendations

Article 19 therefore recommends:

- The governments of coalition forces and other states should refrain from criminal investigation and prosecution of Wikileaks activists for the publishing of the materials on Iraq and Afghanistan as well as their sources

- All states should adopt and properly implement right to information laws which recognise the public interest in disclosure of information. Restrictions on access for national security reasons should be strictly limited

- All states should adopt comprehensive whistleblower-protection laws

- State secrets acts should only apply to those public officials and others who have agreed to be subject to them. Journalists and publishers should not be liable under these laws for disclosing information of public interest. The laws should also include public interest defences for protecting whistleblowers

- Internet sites should follow good ethical practices in their reporting activities.

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## Chasing Wikileaks

Raffi Khatchadourian  
*The New Yorker* blog  
5 August 2010

MARC Thiessen draws upon my article in *The New Yorker* to make his case against Julian Assange, the editor of Wikileaks, and to argue that American “military assets” could be used “to bring Assange to justice.” Using the military for this purpose would be a terrible idea. Wikileaks may not be a

conventional news organization, but it is not “a criminal syndicate,” as Thiessen asserts, and the notion that the Defense Department should go about destroying privately run Web sites (with infrastructure in friendly countries), because of what those sites publish, suggests a gross misuse of military force. Rather than treating Wikileaks like a terrorist cell, the military is better off accepting that the Web site is a product of the modern information age, and that it is here to stay, in some form or another, no matter who is running it.

Thiessen’s argument calls to mind the music industry’s effort to shut down Napster — a Web site where recorded music could be traded and downloaded without regard to copyright — in the 1990s, in that it loses sight of the broader technological and cultural revolution that the Internet has brought to the exchange of information. In 2001, after a lengthy legal battle, the Recording Industry Association of America succeeded in forcing Napster offline, only to watch Napster’s services move to a number of other Web sites that were structured in a more decentralized way — making the piracy of music even more diffuse and difficult to prosecute. Only recently has the industry grudgingly been adapting to file-sharing rather than fruitlessly seeking to eliminate it, and one can now find music executives who even speak of Napster as a lost opportunity for their industry.

Shutting Wikileaks down — assuming that this is even possible — would only lead to copycat sites devised by innovators who would make their services even more difficult to curtail. A better approach for the Defense Department might be to consider Wikileaks a competitor rather than a threat, and to recognize that the spirit of transparency that motivates Assange and his volunteers is shared by a far wider community of people who use the Internet. Currently, the government has its own versions of Wikileaks: the Freedom of Information Act and the Mandatory Declassification Review. The problem is that both of these mechanisms can be grindingly slow and inconsistent, in part because the government appears to be overwhelmed by a vast amount of data that should never have been classified to

begin with — a phenomenon known as “overclassification.”

Managing so much inaptly classified data comes with certain technical costs, but it presents a very human problem, too: people within the intelligence community will inevitably lose some degree of faith in a system that does not distinguish between genuine secrets and classified material that obviously could be published widely without harm to policy. Such a system devalues secrecy itself, and for all the tough reforms that will likely be implemented after the recent Wikileaks disclosure of more than 70,000 classified military reports this July, few will be as effective as combing through the vast and chaotic trove of reflexively classified material and attempting to make large portions of it publicly accessible.

It’s worth recalling the first Wikileaks project to garner major international attention: a video, shot from an Apache helicopter in 2007, in Iraq, that documented American soldiers killing up to 18 people. For years, Reuters sought to obtain that video through FOIA [Freedom of Information Act] because two of its staff members were among the victims. Had the military released this footage to the wire service, and made whatever minor redactions were necessary to protect its operations, there would never have been a film titled *Collateral Murder* — the name of Wikileaks’s package for the video — because there would have been nothing to leak. Even after Assange had published the footage, and even though the events documented in it had been previously revealed in detail by a *Washington Post* reporter, the military (at least, as of July) has still not officially released it.



Still from *Collateral Murder*

There is a simple lesson here: whatever the imperfections of Wikileaks as a start-up, its emergence points to a real shortcoming within our intelligence community. Secrets can be kept by deterrence — that is, by hunting down the people who leak them, as Thiessen proposes, and demonstrating that such behavior comes with real costs, such as prison time. But there are other methods: keep far fewer secrets, manage them better — and, perhaps, along the way, become a bit more like Wikileaks. An official government Web site that would make the implementation of FOIA quicker and more uniform, comprehensive, and accessible, and that might even allow anonymous whistleblowers within federal agencies to post internal materials, after a process of review and redaction, could be a very good thing — for the public, and for the official keepers of secrets, too.

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## How to use your phone

### How whistleblowers should leak information, part 6

Julian Assange

<http://mathaba.net/news/?x=62454131>

August 2010

THERE are some simple facts about mobile phones that many people don’t understand. Every mobile telephone carries, within it, its own unique serial number. That is a separate number to the number that is on the sim-card. It is not enough to simply change the sim-card for a mobile phone.

Telecommunications companies will automatically pair the changed sim-cards with the same phone. Similarly, it is not enough to transfer the sim-card from one mobile phone to another.

To have convenient mobile phone communications with people who are facilitating or getting that information out, or with your lawyers, what you want is a pre-paid, disposable mobile phone.

That means both the phone and the sim are not traceable to you through any sort of payment records or registrations. They should be paid for in cash, and preferably bought by someone else, or bought second-hand.



Now in some countries [including Australia], you have to provide an ID to buy a mobile phone or sim-card.

However, there are usually shops, some Turkish or Chinese shops, little shops of importers, typically ethnic importers, who will not be engaged in that paperwork process [as they don't want to pay government taxes].

You can usually get an untraceable mobile phone in those locations. You can also order in sims from other countries, or order in phones.

A good way to do that can be on an auction site that will send across a mobile phone and sim, second-hand, from somewhere else, that is already associated with a totally different identity.

But when paying for mobile phones, sims, or second-hand orders, or postal information, you should be careful to not use your credit card, or another sort of payment method, that is associated with you.

When you do find a good source of untraceable mobile phones and sim cards, get a whole lot, but not all at once.

### Phone hygiene

Never use the mobile phone you are using to communicate with the journalist or human rights lawyer or someone else who is getting your disclosure out to the public, for anything else.

Do not use it to call your mother, do not use it to call your children, do not use it to call your work, do not use it to call your home phone, and do not even try to carry it around at the same time as you carry around another mobile phone.

Keep it off as often as possible; try not to leave it on next to the house. If you want to establish contact conveniently, keep the phone turned off, and when someone calls you, there will be a record kept on the mobile phone.

When you turn it on, away from the house, you will see that someone tried to call you, and you can then return their call.

After you finished speaking to them, turn it off again.

### Final thought

It is important to remember that not only are the real risks of getting information out to the public much

lower than people can see, but also the opportunities are extraordinary.



Julian Assange

Sources that I have worked with, who to this day remain anonymous, have been involved in helping us to bring down corrupt elements. They have exposed billions of dollars worth of money laundering around the world, exposed assassinations and reformed entire constitutions.

Those sources, no doubt, are very proud to see the effects of their courage, and I have been proud to work with them, in realising that effect.

*For more information*

<http://www.wikileaks.org>

<https://sunshinepress.org>

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## Whistleblowers need courage

Don Allan

*The Chronicle* (Canberra)

29 June 2010, p. 19

I WONDER why, in our fair go society, whistleblowers attract opprobrium?

The more I think about how some people in our community react to whistleblowers, the more it seems to me that castigating them for exposing the dishonesty of those held up as model citizens shows lack of moral courage.

In my opinion, instead of being castigated and vilified as doblers, whistleblowers should be praised for having the courage to do the right thing.

Making headlines is not the objective of whistleblowers; they do it because they think corruption is wrong. Nor do they seek recognition, reward or glory.

They do it because they want to remove corruption from all levels of public, political and religious life to

help improve the social and moral life of their community.

Unfortunately, people such as this seem to be growing fewer in the upper hierarchies of commerce, public service, politics or religious life.

Take the public service as an example. I have heard from public servants of corruption within the service and that some people improve their position through corruption rather than ability.

This corruption takes many forms, with minor bribery often playing a role.

This minor bribery is often as simple as a person contending for promotion, passing on to those responsible for deciding the winners in the promotion race, information about another competitor that would cause them to be removed from the race. Unfortunately, because corruption is like a weed that is hard to contain, this first corrupt act could be the first of many on the path to even greater corruption, with the briber in this case becoming the bribed at a later stage.

And if the briber is successful in climbing the promotion ladder through bribery, the bribes they pay and the bribes they expect others to pay later, also become greater.

This raises the question: does our society really value honesty and integrity, and if so, how can these values be passed on to succeeding generations?

High on my list would have been police officers. A former police officer myself, I find it sad that many officers — but fortunately not all — have contributed to what seems a diminishing respect for honesty and integrity.

And as someone who was taught at home and during my seminary days to respect honesty and integrity, I would have difficulty in recommending some religions as teachers of these values.

Last but not least come politicians.

The history of Australian politics is littered with the names of politicians from all parts of the political spectrum who have hijacked government for their own benefit.

Thus, we should be thankful the media keeps an eye on politicians they suspect of dishonesty and if they can prove dishonesty, they can then blow the whistle on them before they benefit further.

[article edited for length — ed.]

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## Articles

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BOOK REVIEW

### *Sarah's last wish* by Eve Hillary

reviewed by Brian Martin

SARAH WESTLEY, aged 13, was dying of cancer. In a quiet moment alone with her father Mark not long before she died, Sarah asked him to promise one thing — that no one would ever be treated the way she had been for the previous two years of her life.

*Sarah's Last Wish*, a book by Eve Hillary, is the story of those two years. It is also an important step towards fulfilling Sarah's wish.

Mark and his wife Di had six children. Sarah was the third. The Westleys lived in rural New South Wales and were known in the local community as solid, hard working, sensible and family-minded. Sarah was energetic, strong-willed and a natural leader, with boundless good health and spirits. All that changed when she was 11 years old.

When Sarah suddenly became ill, her parents rushed her to the nearest hospital in their region. Rather than addressing the growth in her abdomen, the doctor suspected Sarah of being pregnant, despite her showing no signs of puberty. He contacted the NSW Department of Community Services (DOCS), a child protection agency, whose staff started probing into the Westleys' lives. Before long, DOCS staff had a secret file on the Westleys, including false information alleging they had unusual religious beliefs. In fact, they were not members of any religion.

Eventually Sarah was seen by someone who examined her physical condition, and she was rushed to surgery. The surgeon removed a huge tumour, the size of a small football. Sarah had a rare form of aggressive ovarian cancer for which the chance of survival was minimal. But her parents were not told this.

The oncologist (cancer specialist doctor) at the regional hospital told them that Sarah had an excellent chance of survival if she had aggres-

sive chemotherapy. Mark and Di wanted to consider the options, but the oncologist did not welcome anyone questioning his plans, and before long DOCS was involved. The assumption was that if unusual religious beliefs were involved, this might mean the Westleys would oppose chemotherapy, and their resistance had to be overcome.

The story is much more complex than this. There was another oncologist involved, at a Sydney hospital, plus various DOCS workers, other health professionals, and eventually the courts. There were unending meetings and trips.

The core issue was informed choice of treatment. Sarah's parents were open to chemotherapy but they wanted to see the evidence and to consider alternatives. Their primary concern was Sarah's life, including her quality of life. However, the oncologists were determined that Sarah have aggressive chemotherapy and saw the family's concerns as evidence of resistance to be overcome at all costs. So DOCS was brought in and the nightmare continued.

The story of Sarah's experiences is harrowing. Despite repeatedly expressing that she did not want chemotherapy, and despite her parents' refusal to give consent, she was forced to have treatment, over many months. Court orders obtained by DOCS were used to overcome any opposition. The chemotherapy caused Sarah to be violently ill and reduced her to a shadow of her previous state.

At one point, the Sydney oncologist ordered an emergency operation to remove Sarah's spleen, claiming it was many times the usual size. Sarah was flown to Sydney in an air ambulance. The anaesthetist was suspicious: most patients needing an emergency splenectomy are so ill they can hardly move, but Sarah at that point was fit enough to put up a fierce resistance to the operation. The surgeon, brought in specially, cut open Sarah and removed her spleen, but was surprised to find it was normal in size. What was the emergency?

Meanwhile, DOCS used court orders to limit her family's involvement.

For weeks, family members were allowed only two hours of visits or phone calls per day. Sarah was continually monitored by nursing staff and forced to eat the hospital diet. She was not permitted to eat fresh fruit or vegetables or to take vitamins.

A few of the nurses and doctors involved were kind and sympathetic to Sarah and suspected that her treatment was inappropriate and abusive, but not one was willing to challenge the oncologists or DOCS. There were no whistleblowers within the regular medical system.



Sarah in July 2003, in pain following her forced splenectomy

Enter Eve Hillary, a health practitioner and writer. Following Sarah's initial tumour surgery, her parents took her to Hillary's Integrative Health Clinic for post-operative therapy. After that Hillary and her staff were drawn into Sarah's life through the Westleys' battles with the medical establishment.

Eventually, after the Westleys had tried every legal angle to defend Sarah, they decided it was time for publicity. They approached Hillary. Could she do something? She approached various journalists, but none was willing to do anything because of the DOCS court orders. So Hillary wrote an article herself. She arranged publication in a Melbourne journal and put it on the web. Numerous readers were outraged by Sarah's treatment and before long some of them applied pressure on her

oncologist, who suddenly eased the hospital's restrictions on her.

After Sarah died, Hillary, with the Westleys' support, spent several years researching what had actually happened to Sarah and how. The result was *Sarah's Last Wish*. It tells the story of Sarah's illness and her experiences in the medical system in a straightforward way, mainly from the point of view of Sarah's parents. As a parallel story, it describes the activities of DOCS and medical personnel involved, many of which were entirely unknown to the Westleys at the time.

Hillary, in a reader's note at the beginning, explains how she has used documents and interviews to obtain information and then used creative licence to tell the story, including reconstructing conversations. The result is as engaging as any novel. Here is a sample conversation involving two of Sarah's sisters, Laura and Hannah, at a meal at home with their parents Mark and Di.

Hannah was impatient to see her sister [Sarah, then in hospital]. "Can we go with you Dad?" she begged. "It's creepy at the house."

Mark looked from Hannah to Laura. "What do you mean?" he asked.

Laura was about to rebuke her sister for raising the issue, since she didn't want to worry her father. But, on consideration, she thought it might be time to be up-front about what was happening to them. "I think she means, when we go to our house after school, sometimes things are in different places than they were when we left them. And some things go missing," explained Laura.

Mark put his fork down. He deliberately had not mentioned the peculiar things that had happened to him. "What kind of things go missing?" he asked.

Laura looked around the table. Almost everyone had stopped to hear what she would say. "Sometimes, your desk in the study gets messed up, Dad. And, one thing I know for sure. I'm writing to my friend about what we're all going through, and I hide the letters she writes back in a special place. The

other day I noticed they were gone." (p. 142)

Hillary's narrative creates a sense of impending doom. What will happen next in the downward spiral of coercive ill-treatment? The book is aptly subtitled *A Chilling Glimpse into Forced Medicine*, as it is chilling indeed. It is excruciating to read about the way the honest, caring Westleys are treated by an implacable bureaucracy.

It is a consolation, in a way, to know from the very beginning that Sarah will die and her suffering will end. In the final weeks, Sarah escaped to a Melbourne hospital where she was given the supportive end-of-life treatment she needed all along, providing a dramatic contrast to the oppressive medical regime in NSW.



Sarah in July 2004, after treatment in the Integrative Health Clinic. A month later, the clinic was forced to close. After this, Sarah went downhill rapidly and died in October.

Some of my research on injustice is relevant to understanding Sarah's story. When a powerful person or group does something that others are likely to see as unfair, the perpetrator commonly uses five tactics to minimise public outrage: cover up the action; devalue the target; reinterpret the events; use official channels to give an appearance of justice; and intimidate people involved. *Sarah's Last Wish* provides extensive evidence that the players responsible for Sarah's coercive treatment — mainly DOCS and the two oncologists, with the legal system in support — used all five of

these methods. Here are a few examples.

*Cover up the action.* The oncologists never provided the Westleys with Sarah's medical records, and even defied a court order that they do so. They refused to provide evidence supporting their treatments of Sarah. They hid information about Sarah's condition. Years later, government departments are still resisting FOI requests for documents about the affair.

*Devalue the target.* DOCS treated the Westleys as religious extremists. Sarah herself, on the basis of a misleading test, was judged as not mentally capable of making a decision about her treatment.

*Reinterpret the events.* The oncologists and DOCS presented themselves as defenders of proper treatment for Sarah. They lied about her health status. They treated the severe side effects of chemotherapy as insignificant.

*Use official channels to give an appearance of justice.* DOCS went to court repeatedly to obtain legal support for their actions. When the Westleys and others questioned Sarah's treatment, the court orders were used as justification.

*Intimidate people involved.* The Westleys were threatened with legal action should they not cooperate. They were subject to extensive surveillance. There was a risk that their other children — Sarah's brother and sisters — would be taken away by DOCS.

These are the same methods commonly used against whistleblowers. And what happened to Eve Hillary, the chief whistleblower about Sarah's treatment? She had set up the Integrative Health Clinic as the culmination of her vision for providing nutritional and other therapies complementary to the conventional medical treatments of surgery, radiotherapy and chemotherapy. Following the clinic's involvement with Sarah's case, the authorities attacked the clinic and shut it down, leaving five staff out of work and hundreds of patients abandoned in the middle of their treatment.

To counter these five methods of inhibiting outrage, we should follow Hillary's example by using five

methods to promote concern about abuses.

*Expose the actions.* Hillary did this with her article — it was the single most important action that changed things for Sarah. Hillary has exposed far more with *Sarah's Last Wish*.

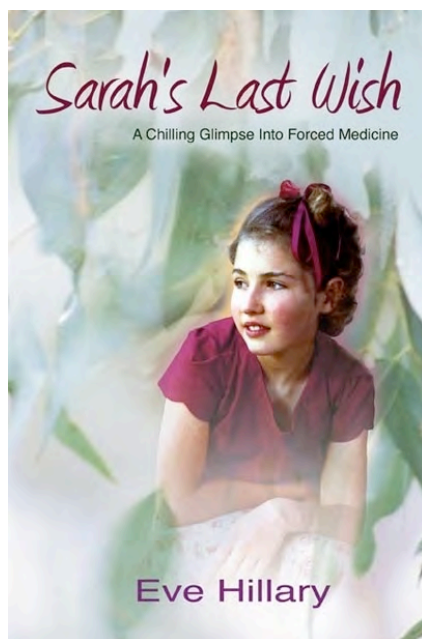
*Validate the target.* The book shows the Westleys in an authentic light throughout, countering attempts at devaluation.

*Interpret the events as an injustice.* Hillary does this throughout the text. In addition, at the beginnings of chapters she provides relevant statements about medical ethics, for example “Treat your patient with compassion and respect” from the Australian Medical Association’s code of ethics. These statements provide striking contrasts to the abuses perpetrated against Sarah and her family. Hillary also cites the UN Convention on the Rights of the Child in support of her perspective.

*Mobilise support; avoid or discredit official channels.* Hillary’s article triggered a huge outpouring of support, from within Australia and internationally, and changed things for Sarah. In contrast, the repeated efforts by the family to help Sarah through the courts were almost completely ineffectual.

*Resist intimidation.* Sarah, despite being tormented and terrified by her treatment, at times stood up to her doctors. She repeatedly protested against her forced treatment. Her parents were remarkable in continuing to do everything possible for Sarah. Hillary stood by Sarah despite the risk to her clinic.

Sarah’s experiences reflect systemic problems in the NSW health system linked to counterproductive state legislation for mandatory reporting of child abuse. Reading *Sarah's Last Wish*, it is important to keep in mind that there are many good people in the system, including in NSW. But good intentions are not enough when the system enables the sort of abuse that Sarah suffered. *Sarah's Last Wish* is potent testimony to the need to bring about change so that, as Sarah wished, no one else should have to suffer the way she did.



Eve Hillary, *Sarah's Last Wish*, 2010. Visit <http://www.sarahs-last-wish.com> or contact [sarahslastwish@gmail.com](mailto:sarahslastwish@gmail.com)

Brian Martin is editor of *The Whistle*.

Thanks to Sharon Callaghan, Don Eldridge and Jenn Phillips for valuable comments on drafts of this review.

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## Whistleblowing in private business

Peter Bowden

THE Commonwealth Treasury recently undertook a review of protections available to whistleblowers in the private sector. Peter Bennett, President of Whistleblowers Australia provided a personal submission, as did I. Both of us also attended the subsequent roundtables hosted by the Treasury. This article, a shortened version of a review that is to appear in the *Australian Journal of Professional and Applied Ethics*, outlines the results so far of the Treasury’s examination.

The management of the whistleblowing process in the private sector is outlined in the *Corporations Act*, administered by the Australian Securities and Investments Commission (ASIC). The examination of its effectiveness was initiated by the Australian Treasury on the grounds that amendments made in 2004 have not been effective.

A second reason behind the Treasury examination was to seek further responses to the ethical problems that arose during the recent Global Financial Crisis.

Treasury announced the inquiry in October 2009. Submissions were requested by December that year. Twenty-two submissions were received with 20 cleared for public release. Each submission responded to nine questions posed by the Treasury on optional ways to strengthen whistleblower protection. The majority of respondents, including our two submissions, saw the issue of corporate wrongdoing to be much wider than the concerns raised by Treasury, and argued for a much expanded whistleblower protection program. The breadth of issues raised by the respondents suggested that Treasury had a relatively narrow view of the extent of the reforms that might be necessary.

Responses came from three academics researching in this area, two of the larger Australian banks, nine professional associations, including the personal submissions, three companies providing whistleblowing services, one finance company and one law firm. Both of the last two had been involved in whistleblowing issues. Telstra also provided a submission. The nine questions posed by the Commonwealth Treasury, together with the dominant responses, are outlined in the following paragraphs.

### **A. Who can blow the whistle?**

Existing legislation is currently restricted to employees and contractors. The majority of responses supported the option to extend the legislation to all members of the public, on the basis that many people who came into contact with an organisation could identify possible wrongdoing, and that wrongdoing would need to be investigated and stopped. A supplier, for instance, could identify a dishonest buyer. Such a buyer could cause price increases and therefore be acting against the public interest.

### **B. Should a subsidiary be covered?**

The universal answer to this question was yes.

### ***C. What issues can be disclosed that would earn protection?***

This issue generated great differences of opinion. The Treasury discussion paper noted the anomalies in the current legislation, suggesting that there was “a clear need for the scope of protections to be expanded.”

Legislative responses in the UK and US were outlined in the Treasury options paper. These practices are much wider than in Australia. In Britain, the Public Interest Disclosures Act, 1998, qualifying disclosures include any criminal offence, failure to comply with any legal obligation, miscarriage of justice and dangers to health, safety or the environment. In the US, the Sarbanes-Oxley Act confines itself to financial disclosures, but close to 20 other interlinked pieces of legislation widen the extent of whistleblower protections.

The need to stop a wide range of corporate wrongs is certainly more pressing than the options offered by Treasury, and possibly wider than ASIC’s legislated and administrative ability to handle. This widening would need to be beyond damage to public health, safety and the environment. The Treasury options paper argued, however, that any extension using terms such as “misconduct” or “improper state of affairs” would be difficult for the general public to understand. An extension would also raise issues that ASIC would be unlikely to have the experience or background staff to investigate. Nevertheless, it is readily apparent that whistleblowers who have inside knowledge should be able to bring to public attention any wrongdoing that is against the public interest, and be protected from reprisals for disclosing this information. Any revision to the legislation must also ensure that the wrongdoing is investigated.

Extending the wrongs that can be reported also raises issues in relation to whom they would be reported, who would investigate the issues and how that agency would protect the whistleblower. In short, the role of the agency responsible for whistleblowing issues in the private sector is also a question that has to be resolved.

### ***D. Motives of the whistleblower?***

The question of the whistleblower’s motive has long been an issue in whistleblowing legislation. Much current legislation requires that the whistleblower act in good faith, with the intention that he/she not act through any malicious intent. To most respondents, however, good faith goes to the genuineness of the belief in the information being disclosed. Motive is the reason behind making the disclosure, but the two terms are often confused. The majority of respondents opted for the genuine revealing of a wrongdoing being the primary issue — that any maliciousness behind the disclosure was immaterial to the fact that a wrong against the public interest was being disclosed.

### ***E. Anonymity?***

Should whistleblowers be able to hide their identity, or should they be required to reveal themselves before their claims will be investigated? The current act requires the whistleblower to reveal their identity. The majority of respondents preferred the anonymity option despite its limitations.

### ***F. Court orders exposing identity?***

The issue is whether a court could order the revealing of a whistleblower’s identity but that it first had to consider the impact of this order. Behind this issue is the concern that whistleblowers will be discouraged from coming forward if they believe that their identity may be revealed by a court order. The alternative offered by Treasury was that a court cannot reveal identity unless the party wanting the information can establish that the release outweighs the public interest of keeping identity documents confidential. The preponderance of responses was that the Treasury option was preferred. Successive legal appeals have confirmed that courts currently will not release identity information.

### ***G. Second-hand whistleblowing to be confidential?***

A whistleblower reveals information to an official body that may need to be passed on to a third party for investigative purposes. The question at issue here is whether that third party should also be bound to keep the information confidential, as well as the whistle-

blower’s identity or any information that is likely to lead to identifying the whistleblower. The universal response to this option was that the third party must also meet confidentiality requirements.

### ***H. Should whistleblowers be protected if seeking legal advice?***

The overwhelming response was affirmation of the option that whistleblowers should be protected if they seek legal advice. One dominant reason is the incomprehensibility of the Corporations Act to most people. “Unlovely and unloved” is one description of the Act provided by the Associate Professor of Law at Melbourne (Cally Jordan). Any potential whistleblower would need legal advice to determine whether a particular issue was covered by the legislation and also to know whether they would be protected.

### ***I. Internal whistleblowing***

This question referred to the effectiveness of internal whistleblowing systems, including commercial services such as Stopline, Deloitte’s and Your Call. It asked whether the legislative protections helped encourage whistleblowers. No options were provided. The responses, from those who answered, were primarily negative — the legislation is ineffective.

It should be noted that the US Sarbanes-Oxley Act mandates that an internal whistleblowing system be established.

The Australian Institute of Company Directors made a submission to the effect that the few uses that have been made of the whistleblower provisions “is not an indication that the current provisions have failed.” The Institute’s reasons behind this statement were that the low application of the whistleblower provisions “may suggest that serious corporate wrongdoing has not occurred” in Australia, or “that internal ... procedures are working effectively.” The contrasting opinion in the Treasury options paper, however, and in many of the responses, were that a number of corporate wrongdoings had taken place in Australia in recent years, including several that had not reached media headlines. Treasury itself also indicated that the Act had been ineffectual.

## Issues raised by respondents, additional to those of Treasury

The 20 submissions raised four issues where the respondents went well beyond Treasury possibilities. Each deserves further consideration.

### 1. Managing vexatious or fraudulent “whistleblowers”

A number of submissions raised the problem that people with a grudge against their company, or against their supervisor, could raise false allegations that could cause personal problems and additional expense in resolving the accusations.

The concern is entirely reasonable. There is an extensive literature on people who cause difficulties in organisations. Several submissions and the discussions in the subsequent roundtables, however, provided answers for these concerns. One of the strongest was made by Peter Bennett, who stated that of those who come to WBA for assistance, some 60% were motivated by personal issues and grievances, not by any public interest. Several WBA people, including me, would support this statement. The first line of inquiry, therefore, is determining whether a wrongdoing against the public interest occurred or not. In most personal grievance cases, there is no public interest at work, and often no wrongdoing. These include “whistleblowers” who disagree with the legitimate decisions of their organisations.

### 2. Location and role of responsible agency

Two submissions, both by academics, raised the issue of the location and role of the responsible agency. If the wrongdoings that are to be protected are to be widened, then the agencies that would investigate the problems need to be widened. Also, it is questionable whether the agency that protects the whistleblower, as well as ensures that the disclosure is investigated, should be ASIC.

ASIC has done a poor job so far. Nor does it have the legislative support or appear to have the experience or commitment to undertake wide ranging investigations

ASIC also acts through corporate law. Contrasting approaches are seen in the UK and the US where whistleblower protection acts through em-

ployment law. In the UK, whistleblower support works through employment tribunals scattered throughout the country and in the US, through the Office of Whistleblower Protection in the Occupational Safety and Health Administration of the US Department of Labor.

### 3. Protections for whistleblowers

The provisions in the current Act to protect whistleblowers are not extensive, nor do proposals from Treasury extend them significantly. Ten protections are available through the whistleblower protection acts in Australian states (although no state carries all ten). Only five of the possible ten protections are included in the Treasury options.

The major protection to be sought would be compensation for damages. The civil provisions in the US create rights to reinstatement, back pay and damages for whistleblowers. The criminal provisions make it a felony to retaliate against a protected whistleblower. Additional protections available in the Australian states include the right to initiate proceedings for damages, the right to relocate, and the protection available through release to the media.

### 4. A false claims act

There is little doubt that the most effective whistleblowing legislation worldwide is the US False Claims Act. Peter Bennett’s submission argued for such an extension. One submission also argued against it — the Rule of Law Association of Australia. The False Claims Act operates through the whistleblower taking action on behalf of the government to recover funds siphoned off through false invoicing, shoddy goods, or through other forms of dishonesty and theft. The legislation has been responsible for the US government recovering a huge \$22 billion in recent years. The whistleblower receives an average of some 15% of the funds recovered. The largest False Claims case was with Pfizer who paid in damages and fines a total of \$2.3 billion, of which \$1.3 billion was a criminal fine for kickbacks and off-label marketing.

## In conclusion

The current inquiry gives little confidence that a full set of whistleblower protections will emerge from Treasury. This agency does not have the administrative or political mandate to extend whistleblowing operations into legislation by other departments of government.

The eventual answer will only be achieved through a political decision to introduce whistleblowing legislation that will reduce illegal and unethical activities in business. Such legislation is also needed in Australia for the Commonwealth public sector. Such a decision will require a further examination of possible administrative and legal processes. Until this investigation is undertaken, and the conclusions put into effect, Australia will likely remain well behind its larger neighbours, the UK and the US, in efforts to stop corporate as well as public sector wrongdoing.



Peter Bowden

Peter Bowden is Whistleblowers Australia's Education Officer and President of the NSW Branch.



*Whistleblowers Australia*

# Watchdogs and whistleblowers

National conference on whistleblowing  
Whistleblowers Australia annual general meeting

Emmanuel College, Sir William MacGregor Drive, St Lucia Q 4067

Saturday-Sunday 27–28 November 2010

CONFERENCE SPEAKERS

**The media watchdog — Alan Jones AO**

Media commentator

**The integrity commissions — The Hon Barry O’Keefe AM, QC**

Former NSW Supreme Court justice and NSW ICAC Chairman

**The ombudsman’s office — Professor Anita Stuhmcke**

Law Faculty, University of Technology Sydney

**The courts — The Hon Bill Pincus QC**

Former Federal Court and Foundation Queensland Appeal Court justice,  
Royal Commissioner, CJC Commissioner and Acting CMC Chair

**The parliamentary committee — The Hon Ray Halligan**

Former chair, Western Australia Parliamentary Corruption and Crime Committee

**The whistleblower experience with watchdogs in Queensland  
— Col Dillon**

Foundation President of Whistleblowers Action Group (WAG) Queensland, 1994

<i>WAG workshops Thursday 25 November</i>	<i>WAG workshops Friday 26 November</i>
9.00–12.30	9.00–12.30
Dealing with the bureaucracy Professor Brian Martin	Dealing with stress Anne McMahon
1.30–4.30	1.30–4.30
Dealing with bullying Dr Bill Wilkie	Dealing with trips and traps Greg McMahon

Conference, \$60; AGM, \$25; workshops, \$60 per day

Registration: phone 07 5448 8218 or write 1/5 Wayne Ave, Marcoola Qld 4564

Please supply name, address, telephone and email

Accommodation available at Emmanuel College at \$60 B&B; phone (07) 3871 9360; ask for Karla

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## Whistleblowers Australia contacts

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**Postal address** PO Box U129, Wollongong NSW 2500

### New South Wales

**“Caring & sharing” meetings** We listen to your story, provide feedback and possibly guidance for your next few steps. Held 7.00pm on the 2nd and 4th Tuesday nights of each month, Presbyterian Church (Crypt), 7-A Campbell Street, Balmain 2041

**Contact** Cynthia Kardell, phone 02 9484 6895, fax 02 9481 4431, ckardell@iprimus.com.au; Peter Bennett, phone 07 6679 3851, bennettp@optusnet.com.au  
**Website** <http://www.whistleblowers.org.au/>

### Goulburn region contact

Rob Cumming, phone 0428 483 155.

**Wollongong contact** Brian Martin, phone 02 4221 3763.  
**Website** <http://www.bmartin.cc/dissent/>

**Queensland contacts** Feliks Perera, phone 07 5448 8218, feliksperera@yahoo.com; Greg McMahon, phone 07 3378 7232, jarmin@ozemail.com.au

**South Australia contact** John Pezy, phone 08 8337 8912

**Tasmania** Whistleblowers Tasmania contact, Isla MacGregor, phone 03 6239 1054

**Victoria contact** Stan van de Wiel, phone 0414 354 448

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## Whistleblowers Australia conference

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See previous page for details

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## Annual General Meeting

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Whistleblowers Australia's AGM is at 9am Sunday 28 November in Emmanuel College, University of Queensland, Brisbane. See previous page.

**Nominations** for national committee positions must be delivered in writing to the national secretary (Cynthia Kardell, 94 Copeland Road, Beecroft NSW 2119) at least 7 days in advance of the AGM, namely by Sunday 21 November. Nominations should be signed by two members and be accompanied by the written consent of the candidate.

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

## Whistleblowers Australia membership

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

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

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

**Send memberships and subscriptions to Feliks Perera, National Treasurer, 1/5 Wayne Ave, Marcoola Qld 4564. Phone 07 5448 8218, feliksperera@yahoo.com**