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

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Media watch

War on whistleblowers: Labor uses a bigger stick to keep its secrets safe

Dylan Welch
Sydney Morning Herald
11 January 2011, p. 1

LABOR is a far more ferocious prosecutor of whistleblowers and leakers than the Howard government, with Kevin Rudd overseeing a doubling of leak referrals to the federal police in his time as prime minister.

Figures obtained during a *Herald* investigation into federal police leak inquiries show the Howard government referred 16 leaks of government material between 2005 and 2007 and the Rudd government referred 32.

Allegations of political leaks are handled by the special references section of the federal police, but most inquiries are run by a unit within it called head office investigations, a multimillion-dollar, 17-officer Canberra group.

The section also investigates other politically sensitive matters and most of its work is investigating leaks of Commonwealth material.

A police source said there was an acknowledgement within the force that leak investigations were generally politically motivated and of little importance. Despite that, officers often investigate because to say no could attract the ire of politicians.

"If the government want us to do it, they're our masters, so we do it," the source said. "And that's not just a particular government. Both Labor and Liberal and everyone in between gets the shits when their policies are undermined or their big announcements appear on the front page of the newspapers 24 hours before they announce it."

Under freedom-of-information law, the *Herald* obtained the final reports of the 48 leak cases — referred by politicians or heads of departments — since July 2005.

The reports show not only Labor's tenacity in pursuing leaks but also that such inquiries, if judged on their outcomes alone, are all but futile.

Only two produced convictions, a success rate of 4 per cent.

Just as stark is the penalty for those found guilty. The two convicted received good behaviour bonds and fines or sureties of several thousand dollars.

But leaks are notoriously difficult to prosecute because government material is often legally distributed to hundreds of public servants, which makes tracking down the leaker difficult.

An investigation in April into how three political journalists received separate leaks about two Labor policies — the home insulation plan and the carbon pollution reduction scheme — involved interviewing 42 people, including ministers, their staff and departmental employees.

The investigation took three months, cost tens of thousands of dollars and required a team of federal officers. But it was closed in July without success.

The reports also reveal that the referrals overwhelmingly concerned cases of political embarrassment rather than security breaches.

The Prime Minister's office would not comment on why referrals had doubled under Labor. A spokesman for Julia Gillard would say only that it was the job of police to establish whether leaks had broken the law.

"As such, the referral of leaks … is appropriate, and has therefore been a regular occurrence."

Leak investigations
Referrals 48
Investigations begun 34
Suspects identified 19
Suspects convicted 2
Source: Australian Federal Police

Teresa Chambers restored as the Chief of U.S. Park Police

Resounding legal victory appears to finally resolve 7-year whistleblower case

Press release, 11 January 2011

WASHINGTON, DC — A federal appeals board today issued a definitive ruling restoring Teresa Chambers as Chief of the U.S. Park Police by the end of the month, according to the decision released today by Public Employees for Environmental Responsibility (PEER), who has represented Chief Chambers. The decision ended a multi-year legal drama that revolved around whether federal civil servants could be fired for telling the truth.

The Merit Systems Protection Board (MSPB), which hears civil service appeals, found that the evidence against Chief Chambers was weak and the motive of political appointees to retaliate was high. The MSPB ruled that no further proceedings were necessary and issued the following directive:

Teresa Chambers

"Accordingly, we ORDER the agency to cancel the appellant's December 5, 2003 placement on administrative leave, cancel the appellant's July 10, 2004 removal, and restore her effective July 10, 2004. … The agency must complete this action no later than 20 days after the date of this decision."

While it is possible that the Interior Department may appeal this MSPB

ruling, that appears unlikely because (1) Chief Chambers has won two consecutive appeals before the Court of Appeals for the Federal Circuit, which would hear any further challenge; and (2) the MSPB rulings on the failure of Interior to meet basic evidentiary burdens would be very difficult to overturn.

"This is a wonderful ruling, not only for Chief Chambers but for thousands who believe that honesty is part of public service," stated PEER Senior Counsel Paula Dinerstein, who argued the appeals for Chief Chambers. "The wheels of justice turn slowly but eventually they do turn."

Chief Chambers was put on administrative leave and stripped of her badge and gun in the wake of an interview she gave to the *Washington Post* in late 2003 concerning how reduced force levels and higher patrol demands were affecting the security mission of the U.S. Park Police, the oldest uniformed constabulary in federal service, established by President Washington. Bush political appointees in the National Park Service and its parent agency, the Interior Department, cooked up a series of administrative charges against Chief Chambers. After leaving her on administrative leave for several months under orders not to speak to the media, Interior finally decided to terminate Chief Chambers in July 2004.

One by one the charges against her have been dismissed for lack of evidence, with the final four charges being tossed today by the three-member MSPB, with two Obama-appointed members, including the chair.

However, the last two years of litigation occurred under the Obama administration which, to the surprise of many, showed no interest in resolving Chief Chambers' or other holdover whistleblower cases.

"We would expect the Interior Department to welcome Chief Chambers back with open arms," said PEER Executive Director Jeff Ruch. "We hope this case opens the path for other whistleblowers to return to public service."

Enron whistleblower: new federal reforms still weak and pointless

Margaret Heffernan
http://www.bnet.com/
3 February 2011

WHITE collar criminals cause more economic harm than armed robbers, drug dealers, car thieves and other miscreants put together. In total, they steal approximately five percent of business revenues annually, dwarfing the losses due to violent crime.

In theory, the Dodd-Frank Wall Street Reform and Consumer Protection Act, signed into law last July, was designed to weed out that corruption, in part by offering new protections and incentives to whistleblowers.

Last week, the New York State Society of CPAs [Certified Public Accountants] convened a panel of experts to discuss whether, in fact, Dodd-Frank will work. Would the new law give whistleblowers enough courage and protection to go out on a limb and confide their concerns to the SEC [Securities and Exchange Commission] and other bodies? That was the question before Enron whistleblower Sherron Watkins, PCAOB [Public Company Accounting Oversight Board] enforcement deputy director Marion E. Koenigs, and former SEC Commissioner Paul S. Atkins.


Sherron Watkins

"No way," was essentially what Sherron Watkins said. Watkins, you'll remember, had uncovered accounting fraud at Enron and subsequently helped the Department of Justice understand the labyrinthine complexity of the 6th largest corporation in America. Unlike most CPAs, she knows what it actually feels like to be a whistleblower, not in theory but in practice. And what she sees in Dodd-Frank doesn't begin to address how fraud happens or how hard it is to get action.

Law ignores the small frauds that lead to big frauds

"There's a saying," said Watkins. "Serial killers start with cats." In other words, fraud starts with small things, not gross billion dollar malfeasance but with bending the rules, cutting corners. One reason it may persist for so long is because no single issue is big enough for anybody to stop it. Instead, standards start to drop, rigor declines and employees get the message that no one knows or cares. But Dodd-Frank's stipulation that, to gain any kind of reward, the whistleblower's actions must result in penalties worth at least a million dollars means that the small, early frauds don't warrant any kind of action. But the longer the fraud goes on, the worse it gets.

"I needed," said Watkins, "to be able to talk to the SEC about Enron in 1996. But under these provisions, I don't think I would have. But that's when we might have been able to stop things in their tracks!"

Whistleblowers aren't encouraged to come forward

If you try to fix the problem internally, fraudulent bosses won't tell you to stop; they're cannier than that. "When Cynthia Cooper started pulling at the thread that eventually unwound WorldCom," Watkins recalled, "her boss didn't tell her to stop. He said: here are my top five priorities and I need you to concentrate on those."

What that means is that, by the time the scale of abuse is gross enough to be worth the extremely traumatic experience of whistleblowing, the employees who know about it will be extremely frustrated, even paranoid. They may even come across as a little mad. (Certainly this problem dogged Harry Markopolos as he tried, again and again, to alert the SEC to Madoff.) At this stage, they desperately need a lot of love, protection and advice — not something Dodd-Frank is set up to provide. The legislation simply does not take into account how extremely dangerous and frightening the experience of whistleblowing is. Moreover, by the time the whistleblower is

prepared to act, it is usually too late; the company can't be saved.

"It is far more lucrative and safe, still, to stay quiet," said Watkins. "The reality is that, after you're known as a whistleblower, it is very hard to resume your professional career. You may have proved your high standards of ethics but most people will label you a troublemaker for evermore." Nothing in Dodd-Frank, she argued, makes up for the sheer cost incurred when you tell the truth.

SEC worries about overwork

But SEC insiders worry the legislation has already gone too far. Unapologetic about its performance in the past, former SEC commissioner Paul S. Atkins worried about what he called the "crackpots" constantly providing tips — people with a grudge against a company or a personal vendetta. "The challenge for the SEC," said Atkins, "is separating the wheat from the chaff." The rest of us might disagree, arguing that the challenge the SEC currently faces is to prove, after Madoff, that it knows what it is doing.

It's astonishing that after all of the financial horrors uncovered in the last ten years, legislators still don't appear to have gotten it into their heads just how hard, risky and dangerous whistleblowing is. According to Watkins, the SEC is so full of people working on a daily basis with healthy companies that they can't begin to imagine how truly venal ones operate. Nor do the lawmakers appear to have any appreciation of the wilful blindness — on the part of accountants, auditors, oversight bodies and federal agencies — that allows fraud and corruption to penetrate large organizations and grow for years.

But you have to wonder. If, after all the country has gone through, we still can't get this right — what more will it take?

Bill protecting journalists' sources curdles in Canberra

Richard Ackland
Sydney Morning Herald
28 January 2011, p. 11

THE fresh development on the whistleblowing front is that the Pentagon has been unable to directly link Julian Assange with Bradley Manning.

Manning is the army private cooling his heels in uncomfortable conditions at the Quantico Marine Corps base, close to Washington.

The Pentagon is satisfied Manning downloaded classified material relating to the Iraq war and about 250,000 classified State Department cables. What it cannot establish, at least for now, is that Manning gave this material to Assange or WikiLeaks.

Wired magazine speculates that, maybe, this is because Manning erased from his system any evidence of the transfer of documents.

He confessed to a former hacker, Adrian Lamo, in online chats, that anything incriminating had been "zero-filled" from his computers. Still, that doesn't help the US government's efforts to stitch up Assange, who is still on bail in England pending the outcome of extradition proceedings.

Assange was demonised in America because of the publication of diplomatic cables. Right-wingers call him a "terrorist" who should be "taken out."

Using WikiLeaks, the media have been able to reveal an altogether different perspective on the wars in Iraq and Afghanistan; information that citizens know their politicians would never fully reveal.

The political lies surrounding the justification of the Iraq war have shifted the ground substantially. There is now a more powerful legitimacy in publishing state secrets that expose the current circumstances of those wars. More than ever, the ferreting out of government lies takes on a major importance for the media.

WikiLeaks' revelations, the sources involved and the relationships with mainstream newspapers bring into focus the languid state in this country of whistleblower protection for sources and shield laws for journalists, so that they can adequately protect their sources. The two sides of the equation must surely go together.

The Labor government has not lived up to its rhetoric on this topic. Journalists' privilege legislation, introduced into Parliament in March 2009 by the Attorney-General, Robert McClelland, granted only minor concessions. It required courts to weigh the likely harm to journalists and their sources that would flow from an order for disclosure.

It also amended the usual provisions so a breach of the law by a source in communicating with a journalist would no longer be an automatic bar to protection. This really was tinkering at the edges. In any event, the bill lapsed, never to become law. Now we have two shield laws before Parliament, one from the Opposition's legal spokesman, Senator George Brandis, and one from the independent MP Andrew Wilkie, a former whistleblower.

Wilkie's bill has a bold premise: "It is intended to foster freedom of the press and better access to information for the Australian public."

All very well, but it can only create a journalist's privilege for Commonwealth offences. It is by no means certain all the states would allow their public servants the same security.

The essential element in the proposed legislation is that confidential communication between a journalist and a source is presumed to be protected, unless "public interest concerns" outweigh the disclosure. You can forecast with some confidence a good proportion of the judicial attitude to what constitutes the "public interest." The bill also has a narrow definition of "journalist," confining it to someone who is employed as such. The Greens would widen it to include bloggers, "citizen journalists" and filmmakers.

Despite its limitations, the Senate Legal Affairs Committee has approved the Wilkie bill. Oddly enough, some of the media organisations that would benefit from it have campaigned relentlessly against a charter of rights. But it was the European Convention on Human Rights, which is part of British law, that strengthened the position of journalists in Britain after a

celebrated decision by the European Court of Human Rights.

The court essentially said that, prima facie, it is always contrary to the public interest for media sources to be disclosed. The Wilkie bill could only work for journalists as intended if there were free-speech protections that courts were obliged to consider.

It seems those journalists who booed the proposed charter off the stage here scored an own-goal.

The latest whistleblower law was announced almost a year ago by the then cabinet secretary, Joe Ludwig. The earlier idea of limited protection for public servants was to be scrapped in favour of a more effective one. This version extended the protection in certain circumstances to public servants who went to the media or other third parties with evidence of malpractice or wrongdoing.

The Bundaberg Hospital nurse who raised concerns about Dr Jayant Patel says she was intimidated by officials. It was not until she went to an MP that the media got the story. As a result Queensland now has quite a good protected disclosure law. In Canberra there is no evidence of progress. No new bill has emerged. We should not be surprised if a government that deplored WikiLeaks for behaving irresponsibly and illegally now drags the chain on these fundamental reforms.

Cracks in Kessing case illustrate why secrecy is insidious

Chris Merritt

The Australian, 4 March 2011, p. 30

THE latest disclosures about the prosecution of Allan Kessing do not prove that this whistleblower is innocent.

They don't have to.

They point to a procedural flaw in the handling of this case that, in the view of criminologist Paul Wilson, means there has been a miscarriage of justice.

Unless the Australian Federal Police and the Commonwealth Director of Public Prosecutions can come up with an extremely good explanation, the latest disclosures indicate that the Kessing prosecution was unfair.

Federal law enforcement agencies had information that could have helped the defence but they kept it to themselves.

This meant Kessing's barrister, Peter Lowe, was hamstrung. He was denied critically important material that could have helped him persuade the jury there was indeed a reasonable doubt about his client's guilt.

For whatever reason — and hopefully it was ineptitude and nothing more — the scales of justice in the Kessing case were rigged.

Allan Kessing

And for that reason alone, this man's conviction cannot be allowed to stand.

This flaw is by far the greatest problem that has come to light on the Kessing prosecution. When the other problems with this case are thrown into the mix it is hard to see how his conviction can still be considered safe.

When Virginia Bell was a judge of the NSW Court of Criminal Appeal she found that part of the trial judge's instructions to the jury was wrong. At the time, Bell did not believe this alone outweighed the prosecution's circumstantial case.

But Bell, like everyone else, was unaware of the content of the letter that has now come to light.

Bell was also unaware of the real reason Kessing declined to give evidence in his own defence: he was hiding the fact that he had been responsible for an undisclosed leak to the office of Anthony Albanese.

At the time Albanese was the Labor opposition's transport spokesman and the local MP of Kessing's late mother, who was being cared for by her son. Albanese is now Infrastructure Minister.

There will be those who might view Kessing's involvement with Albanese as suggesting that if he did it once, he probably did it again.

That line of argument misses two key points: this man's conviction appears unsafe because someone in the federal law enforcement system decided to skew the playing field.

Sooner or later, the AFP and the DPP will provide some answers that will help decide where the blame lies.

The second point is that Kessing deserves a pardon either way.

He admits that he leaked a document to an Albanese staffer in order to save lives at Sydney airport after inept bureaucrats refused to deal with security flaws.

Kessing has retained documents and phone records that prove, at the very least, that he had significant dealings with Albanese's office.

There is now a very strong argument that Kessing was convicted of the wrong leak: he was convicted of leaking to *The Australian,* something he vehemently denies.

So it looks like this man is simultaneously a victim of injustice and a real whistleblower who risked his liberty because it was the right thing to do.

And that applies even though it meant breaching the self-serving secrecy laws that generations of federal politicians have used to hide maladministration.

If anyone needs convincing about the insidious impact on the justice system of this fixation with secrecy, look no further than this case.

It shows that federal law enforcement agencies appear to have concluded that government secrecy laws — unlike laws against real crime — can safely be applied selectively. Back in 2005 when the leak at the heart of this affair embarrassed the government of John Howard, there was almost no limit to the resources the Australian Federal Police devoted to finding someone to blame.

Kessing, who at that stage had retired, was followed through the streets of Sydney and subjected to the sort of scrutiny that even career criminals rarely receive.

But when he admits that he broke the same secrecy law by leaking to Albanese's staffer, the law enforcement agencies behave as if nothing has happened.

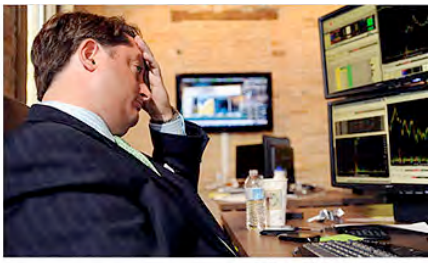
Could it possibly be that the complexion of the government in Canberra is a relevant factor in the enforcement of the Commonwealth Crimes Act?

This selective application of secrecy laws proves what many have long known: these laws are too easy to abuse and desperately need reform.

Whistle. Then worry and wait.

Edward Wyatt
New York Times, 9 October 2010

SITTING in a Minneapolis mansion and listening to a charismatic investment manager describe a currency trading system that kept earning handsome returns year after year, Arthur F. Schlobohm IV was certain he had stumbled onto a Ponzi scheme.



Craig Lassig for The New York Times

Arthur F. Schlobohm

A longtime trader who started running tickets on the floor of the New York Stock Exchange as a teenager, Mr. Schlobohm, known as Ty, knew that Minneapolis, his home for nine years, was too small a town for a $4.4 billion investment fund to have escaped his notice.

It had taken him just a few Google searches to discover that the fund's manager, Trevor G. Cook, had been suspended twice by the National Futures Association and been fined $25,000 for using false information to open a trading account for a customer. Calls to contacts in Switzerland and Kuwait also raised doubts about Mr. Cook's boasts about deal-making abroad.

Yet Mr. Schlobohm later found himself back in Mr. Cook's mansion, surrounded by a room full of his neighbors, many of whom were about to hand their life savings to a charlatan.

"If I could have just leaned over and whispered in someone's ear, 'Don't invest in this! Just trust me!,' there would be a family out there now with kids that could go to college," Mr. Schlobohm recalls of the meeting, which took place 18 months ago.

But he couldn't do that. At the time, Mr. Schlobohm, now 37, was working as an informant for the Federal Bureau of Investigation. Wired to record Mr. Cook's sales pitches and carrying a hidden camera, Mr. Schlobohm gathered evidence for at least four months as the Justice Department zeroed in on the scheme.

Mr. Cook pleaded guilty to mail and tax fraud last summer and was sentenced to 25 years in prison for orchestrating what ultimately became a $160 million swindle. William J. Mauzy, a lawyer who has represented Mr. Cook, did not respond to repeated requests for comment and for an interview with Mr. Cook.

That the authorities brought Mr. Cook to justice is undoubtedly a positive outcome. But Mr. Schlobohm's journey as a whistle-blower, and some of the financial losses that still occurred even though authorities were closely monitoring Mr. Cook, also underscore the limitations of the system.

During the period when Mr. Schlobohm helped the FBI to gather evidence, from April through July 2009, at least $16 million flowed into Mr. Cook's fund — and disappeared. From the time securities regulators first had credible information that he was engaged in a fraud and when the authorities shut down his fund, December 2008 to July 2009, some $35 million flowed into his coffers — funds that afforded Mr. Cook a lifestyle that included an expensive gambling habit, a collection of Fabergé eggs, fancy cars and the construction of a casino in Panama.

"There was a tremendous amount of guilt being there," watching Mr. Cook lure investors, said Mr. Schlobohm in an interview, the first in which he has spoken publicly about how he helped put Mr. Cook behind bars. "Knowing this was a fraud with the highest degree of certitude, and having to watch people in the process of losing their life savings, was extremely difficult."

The United States attorney for Minnesota prosecuted the case against Mr. Cook, and the Commodity Futures Trading Commission and the Securities and Exchange Commission are both pursuing civil suits against Mr. Cook and helped with the federal investigation. Those agencies point to the Trevor Cook case as an example of the positive lessons authorities learned from the Bernard L. Madoff scandal and other regulatory debacles. (In the Madoff case, tipsters warned regulators for years of problems, but they did not take action until Mr. Madoff's fund collapsed.)

For all of the Justice Department's efforts, though, only about 5 percent of the $160 million invested in Mr. Cook's scheme has been recovered.

And for his part, Mr. Schlobohm says that his time as a whistle-blower was often an ordeal, leaving him worried about his safety and that of his family. After he began acting as an informant, he was spending considerable time on the case. He and his employer, an investment company, agreed that it was better for him to quit than to risk dragging the firm into the probe.

"There were definitely times when I was fearful," he says. "I had to ask questions and dance on a tightrope, pretending I was going to help them bring money in without being obvious I was working with the federal regulators. They certainly knew what they were doing was a fraud, so I was surprised that they weren't thinking that maybe someone else had discovered it."

ONE day in early 2009, Ty Schlobohm was visiting the 117-year-old Romanesque mansion that Mr. Cook had bought for $2.8 million and outfitted as a modern trading floor, where walls of flat screens flashed currency prices from around the globe.

"I was walking down the stairs, and on the first floor they had a big conference room," Mr. Schlobohm recalls. "There sat no less than 25 women, all north of [older than] 65 to 70 years old, at an investment seminar where

one of the salesmen was waxing poetic about the strategy. I was fairly certain at that point that I was looking at some degree of fraud."

That epiphany, backed up by his research into Mr. Cook's trading strategy, which included claims of no-interest loans from a Jordanian bank, led Mr. Schlobohm to take a raft of documents to the authorities.

"I realized," Mr. Schlobohm says, "that in what was somewhat of an unremarkable financial career, this was that fork in the road where I could do something good."

There had already been others who had raised questions about Trevor Cook. The Commodity Futures Trading Commission, a federal agency that regulates commodity markets and monitors foreign currency trading, got a full report on Mr. Cook's suspension in 2006.

Then, in April 2008, Duke Thietje, a Florida investor, filed a lawsuit in a Minnesota state court against Mr. Cook and his firm, Universal Brokerage Services, contending that Mr. Cook lost $450,000 he had turned over to him in 2005 to invest in foreign currencies.

Mr. Thietje abandoned his lawsuit in the fall of 2008. But around that time, his lawyer turned over copies of his filings to the CFTC, providing that agency with its second warning about Mr. Cook.

The CFTC would not comment on the documents, in part because its civil fraud charges against Mr. Cook and his companies are still pending.

After examining Mr. Thietje's allegations, the CFTC decided that it lacked the jurisdiction to do anything about Mr. Cook, according to people close to the investigation who spoke on the condition of anonymity because some charges are still pending. It wasn't until March 2009, when Mr. Schlobohm contacted both the CFTC and the United States attorney in Minneapolis with his information about Mr. Cook, that the CFTC began to connect the dots.

That was made more difficult because Mr. Cook's ventures went by an ever-changing lineup of names: Universal Brokerage Services, UBS Diversified, Oxford Global, Market Shot, the Basel Group, Crown Forex.

None of them, however, were registered with either the Commodity Futures Trading Commission or the SEC. So even after Mr. Schlobohm provided his own research pointing to a Ponzi scheme, regulators said they had limited options as to how they could act.

According to two senior regulatory officials speaking on the condition of anonymity because the civil cases are still in court, the agencies could not simply walk in and demand to see the firms' books and records without running the risk that the group would fold up shop and disappear with investors' money.

And the agencies thought that convincing a judge that the Cook firms' assets should be frozen required more evidence than they had from Mr. Schlobohm, the officials said. Mr. Cook was indeed sending some of his victims' funds to foreign currency trading accounts, where his unauthorized trading was losing millions of dollars. In the end, regulators discovered 21 domestic bank accounts and 27 brokerage accounts involved in the scheme, as well as 19 foreign accounts at 17 institutions in 12 countries, many of which zealously guard the identity of depositors.

Mr. Schlobohm had few doubts, however. Mr. Cook was telling potential investors that he was producing monthly returns of one-half to 1 percent, month after month, without a loss, over a period that included one of the worst investment markets in modern times.

Mr. Cook claimed to be generating those profits by performing a so-called carry trade that allowed him to game the differences on currency yields in various countries. He used investors' money, he said, to buy high-yield securities denominated in a currency like the Australian dollar. He then sold low-yielding securities denominated in United States dollars, and pocketed the difference in returns. Next, he said, he used interest-free loans to set up a mirror-image trading position, creating a perfectly hedged transaction that, he said, produced guaranteed profits.

The free money, he said, came from a bank in Jordan, which, because of Shariah Islamic law, was not allowed to charge interest. Mr. Cook said the difference between the two trading positions generated annual returns of 10 percent to 12 percent — year after year after year.

In reality, what Mr. Cook was running was a plain-vanilla Ponzi scheme, in which he simply used money from new investors to pay off earlier investors and maintain the mirage that his funds were earning handsome returns.

EARLY in his discussions with the FBI, Mr. Schlobohm recalls, an agent informed him "that Trevor Cook had been on their radar screen before," but the bureau had been unable to pin anything on him.

The FBI took the lead in the Cook investigation, focusing on gathering evidence for a criminal prosecution rather than on immediately shutting down the fraud and securing investors' funds. An FBI spokesman declined to comment on the investigation.

Unlike civil cases, criminal cases often require that investigators amass evidence of both the crime and the perpetrator's intent before producing an indictment — usually translating into longer, more challenging investigations.

Given those hurdles, the FBI came to rely heavily on Mr. Schlobohm to gather information for its case.

Wearing two microphones and carrying a hidden camera, he attended at least 10 meetings in which Mr. Cook or his associates tried to raise money from investors.

Some parts of the undercover operation didn't go smoothly. With tape recorders strapped to him, Mr. Schlobohm was reluctant to go to the bathroom at the mansion for fear of discovery. "I was crossing my legs and chewing on my knuckle," he recalls, and says that he once was forced to drive to a nearby FBI building to relieve himself.

Other aspects of his duties were also tedious. The special agent assigned to Mr. Schlobohm had no expertise in financial crimes, and Mr. Schlobohm said he had to spend hours explaining carry trades and hedges and foreign currency markets to the agent.

"I had a wheelbarrow of information on this fund in March 2009," Mr. Schlobohm says. "On a daily basis, I was saying all you have to do is ask an hour's worth of questions to understand that Ledger A will not match up with Ledger B in terms of assets. That could be completed in a day. And I just kept being given ambiguous answers, that there was a process, there was a protocol, and that they could not just shut it down."

Officially, the CFTC and the SEC said the case was an example of a successful multi-agency investigation. But in truth, with the FBI and Justice Department running the undercover operation, the regulatory agencies were sidelined. In April 2009, after the undercover operation began, the United States attorney's office specifically asked the civil regulators to halt any overt investigations to prevent tipping off the targets, according to two regulatory officials.

It wasn't until late June 2009 that securities regulators got the go-ahead from prosecutors to finally subpoena the records of Mr. Cook's companies. The next month, investors first became aware that something might be amiss in Mr. Cook's mansion when a group of Ohio investors filed a lawsuit against Mr. Cook and his companies, contending that they had refused to let the investors withdraw their money.

That private lawsuit — not the federal investigation — essentially shut down Mr. Cook's operation because it caused investors to scramble for answers about their investments and to get a court order to freeze assets. The SEC and the CFTC filed civil suits against Mr. Cook and others in November 2009, and the United States attorney filed a criminal case against Mr. Cook this year.

Peter Silverman, a lawyer who represented the Ohio investors, said that many financially savvy people could have seen signs of a fraud in Mr. Cook's investment materials. "I think it was inexcusable that the authorities did not move in more quickly to stop people from investing more money," he says.

Joseph T. Dixon III, the chief of the fraud and public corruption unit of the United States attorney's office for the District of Minnesota, said in an interview that the case progressed as rapidly as possible, given the circumstances.

"Criminal cases take some time to put together," says Mr. Dixon. "We have to be able to prove our charges beyond a reasonable doubt."

Mr. Dixon rejects comparisons of the Cook and Madoff cases. "We didn't just sit on this information," he says. "We moved very rapidly. There is a tension between trying to prevent a fraud from happening and having to build a case we believe we can take into court."

He contends, however, that securities regulators were free to take action sooner if they wanted. "Categorically at no time did we ever interfere with a regulatory agency's ability to move," he said.

Mr. Cook, after pleading guilty to one count of mail fraud and one count of tax evasion, was sentenced to 25 years in prison. He was ordered to pay $158 million in restitution. But at last count, only about $9 million had been recovered.

Many people close to the case say they believe that Mr. Cook stashed money away — suspicions that were confirmed in August when investigators first found thousands of $100 bills and gold and silver coins hidden in the walls of his brother's basement, then uncovered a duffel bag full of Iraqi dinars, Turkish lira and other currencies in a locker at the Mall of America.

MR. SCHLOBOHM says his experience shows that for many whistle-blowers, the risks can outweigh the rewards. But while he has mixed feelings about how the investigation proceeded, he has no qualms about his decision to cooperate with the authorities to shut down Mr. Cook's operation — and he says he hopes that others in the investment arena will see it as their duty to do the same.

"I was doing this, and continued to do it, for moral reasons," he says. "I was finally in the position to maybe not make a bunch of people money but maybe to save some people their life savings."

Mr. Schlobohm says that a few weeks into the operation, his contact in the FBI offered to try to arrange some compensation, an offer he says he rejected. The FBI declined to comment.

There were significant costs, however. In April 2009, shortly after he had started working undercover, Mr. Schlobohm found his work as an informant had begun to overtake his regular job. Because he was spending

significant time away from the office, he had to tell his employer what he was doing.

Although his employer was supportive, Mr. Schlobohm and his bosses agreed that he should leave the firm to avoid drawing it into a financial morass. (For the same reason, both Mr. Schlobohm and the company asked that it not be named, although a senior official there confirmed his account.)

"I had to make a decision — either I could continue on with this, which was taking a considerable amount of resources," or keep his job, he says. "And I chose to resign, to finish this out. So it was a financial risk to myself." Now, he trades for his own account and on behalf of a New York investment firm.

He was worried that his undercover work might ruin his career in financial services and, as his mind wandered amid all of the secret taping and debriefing he was doing, he worried about the safety of his family.

Mr. Schlobohm says that because regulators and law enforcement authorities are more reactive than proactive when it comes to financial crimes, it's up to members of the industry to alert people about frauds before investors are hurt.

"The private sector — people like myself, people that are allocators of capital, people that are professional analysts in the asset-management world — have the highest degree of knowledge to be able to sniff this out in a minuscule amount of time, like I did," he said.

Mr. Dixon, the prosecutor, agrees: "We need citizens in the business community to come forward with information so we can move forward." For him, the lesson of the Trevor Cook case is, in part, "the importance of business professionals stepping up and bringing us information — even if there is no financial incentive and sometimes may be financial risk to them."

There is not, Mr. Schlobohm said, a culture of silence among investment firms and managers. But there are subtle pressures.

"If I'm a large university or a huge hospital, and I want you to consult or manage hundreds of millions of my dollars, I want you out there making money," he says. "I'm not giving you money to go off and be a vigilante, a financial vigilante of sorts."

The upside of being a whistleblower might be improving. The Dodd-Frank Act, the regulatory overhaul signed into law by President Obama this summer, included provisions to strengthen whistleblower protections and to encourage people to come forward with information about investment frauds. Now the SEC and the CFTC can reward whistle-blowers with up to 30 percent of any amount over $1 million recovered from an enforcement action.

But because Mr. Schlobohm's revelations about the Trevor Cook case took place in 2009, these new provisions don't apply to him. An earlier SEC whistle-blower program applies only to insider trading cases, but an Internal Revenue Service program might apply, given the tax charges in Mr. Cook's case.

Under the IRS program, Mr. Schlobohm might be eligible for up to 30 percent of the taxes and penalties in excess of $2 million collected by the IRS.

Mr. Schlobohm has hired Phillips & Cohen, a Washington firm that specializes in whistle-blower cases filed under the False Claims Act, to represent him. But he says that he doesn't know if he would accept a reward if one were offered, and that if he did he would probably use it to help victims of the fraud.

"If I were to receive some reward, I think that would be great," says Mr. Schlobohm. "But that's not why I did it."

How a whistleblower should leak information

Julian Assange

Transcribed by Johnnie Eriksson and the Mathaba News Agency from a video by Tristan Copley Smith, produced by the Centre For Investigative Journalism, October 2010. The video and transcription are available at http://www.mathaba.net/

You have secret information that the world needs to know. Here are some simple things that you need to know.

Over the last four years, as editor of WikiLeaks I have dealt with thousands of confidential sources. We have never lost a source. None of our sources has been exposed or come to harm.

During that process, I've learned a lot, and I want to convey what I've learnt to people that are considering blowing the whistle, who are considering getting information out, either directly to the public or through the press.

Blowing the whistle — a guide

First off, understand not just the risks, but also the opportunities.

Think not just what the worst thing that could possibly happen is, but also what is the best thing that could possibly happen.

Once you have these risks and opportunities in the balance and some information, then you can plot a path through that is sensible, safe and effective.

Usually the whistleblowers who approach us do so when they have a moment of moral clarity. They can see something wrong with the situation they are in, or they can see something that needs to be revealed by a particular document.

That moment of moral clarity should be seized. That moment of courage, if a source has it, should be seized and used either to immediately get the material out or as an incentive to understand the situation and plot a path forward that is effective and safe.

Julian Assange

Looking for successful whistleblowers …

Usually if a whistleblower scours the media to find examples of other whistleblowers, they find examples of people that have been caught or who have not been successful. That is because when whistleblowers are successful — confidentially revealing things to the press — they are never mentioned, they are never named, they make their hopefully great impact and go back to their jobs and lead their lives happily, until such time they find something else.

The invisible whistleblower
(http://jacyndaoun.wordpress.com/)

So it can be quite difficult to find positive examples, but there are many "between the lines" [of the news media]: you will often see "documents seen by *The Guardian*," or "documents seen by the *New York Times,*" or "an official speaking under condition of anonymity."

This [such a phrase used in the news media] is only a passing reference so it is hard to see it as an example, but nearly all disclosures are in fact successful.

Getting advice …

After the understanding that the plan should be made to go ahead, the most important thing for the whistleblower to do is to find someone who can be trusted. Trusted to advise them, trusted to provide a safe conduit for them to get their information out to the public. Wikileaks is such an organization. We are specialists in that. But there are also particular journalists in the mainstream press that have similar experiences and can be trusted.

Finding your champion …

So how can the whistleblower find their champion? Well, the important thing to do is to look at who has been a successful champion, over a number of years, of other whistleblowers. You can do that by looking at stories that have come up into the press that have clearly come from some kind of confidential source. Now remember the sources usually are not referred to or named, unless they are caught.

Whistleblowers should look for not only for a champion that will protect them but one that will help get the most impact for the risks that they are taking. Remember there are risks on the one hand, but also often extraordinary opportunities for reform on the other.

Contacting your champion …

So once you've identified someone that you think will protect you and get your story out, how can you safely contact them?

First off, it's important to not be too paranoid. There are some simple ways to get in contact with someone you think will protect you. The simplest is going to a telephone booth, away from where you live, you don't intend to use [again], possibly distorting your voice slightly and calling up the person concerned.

Another simple way is sending something in the post, with no return address.

Another simple method is using a computer that is not associated with you. Say at a library or at a net cafe and being a little bit cautious about the content, or any surveillance cameras that happen to be around.

If you know the location where your champion works, visiting their building in person, and once inside contacting your champion is a moderately discreet way, of engaging in specific conversation.

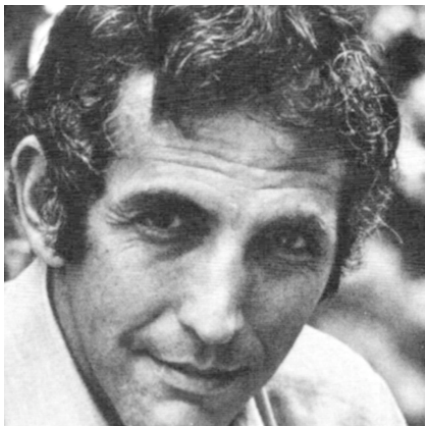
Organisations like Wikileaks have more sophisticated methods. Sophisticated methods that use encryption, bouncing around many hosts on the Internet, to conceal your precise location and identity.

Different organisations, if they take source protection seriously, will advertise what is a good way to contact people there who will help get your message out.

Don't talk about it

It's only natural for people taking a serious decision to want to talk to their friends and relatives about doing it. Don't.

Many whistleblowers have been exposed not by the champion they went to, the organisation they researched who they thought would protect them but rather by their friends, mother-in-laws or other journalists who are peripherally involved. For example, Daniel Ellsberg, the whistleblower behind the Pentagon papers, perhaps the most famous whistleblower in the United States, was undone by his mother-in-law.



Daniel Ellsberg

There will come a day when it is safe to disclose to the world your involvement, or it is safe to disclose to a limited set of people your involvement. But first you have to see how it's going, first you have to see where things are going legally, where things are going politically and where things are going in terms of evidence. Discuss it only with the person you have selected as your protector and champion.

Plan for more disclosures

If you safely get your information out to the public, and it achieves some reform, you want to be in a position where you can do it again and again and again and again.

Similarly you want to encourage and inspire other people to do the same thing by your success. It is your

responsibility to not get caught, not only for yourself, not only for future disclosures you might make but because getting caught sets a really negative example for other people.

The only experience most people have had with investigations is Hollywood. That tends to cause whistleblowers to become extremely paranoid when they engage in a disclosure. Unfortunately that tends to change their behaviour and make them appear suspicious. You want to always be the same person. Try and remember what it was like two weeks before you decided to go on this course of action. You want to be that person all the time.

Your strength is in how relaxed you are. Your strength is in being the same. Do not look around for people spying on you. If they're any good, you will not see them. Do not fiddle with your phone suspecting it is tapped. Do not mention that your phone might be tapped. Do not speak in abbreviated language or codewords with your friends. If you need to speak in a secretive way to someone, meet them in person. Don't act in a way that draws suspicion to yourself. That's what all spies, all under-cover police informants, are trained to do. Act normally.

Don't get paranoid

When people are in a situation where they feel that they may be under surveillance they tend to look for signs of surveillance, and that leads to a confirmation bias. Events, such as a car passing by the house, which once would've seemed perfectly normal, suddenly arouse a whistleblower's attention. And that tends to make them act in a more and more suspicious way.

Should you have to deal with the police …

For western countries there are some simple and effective methods for dealing with the police. If you know these methods it will give you a self-confidence that will make you look less suspicious.

There are two simple pieces of advice.

The first is, get the name of a good lawyer and their telephone number and keep that with you at all times. You can usually find these lawyers either through personal contacts and recommendations or by looking at lawyers who have defended famous and successful cases.

If that doesn't work you can always go to the bar association or legal association and ask for recommendations dealing with a similar subject area to you.

The second simple method is to defeat a trick which is often used by investigators into forcing people to talk. The trick works like this: The investigating officer will ask you a question in relation to an accusation about the disclosure.

Then you have one of two choices; to cooperate with the question or to not cooperate with the question. In many jurisdictions it can be an offence to not cooperate with the question if you are not a suspect, if you are just a witness.

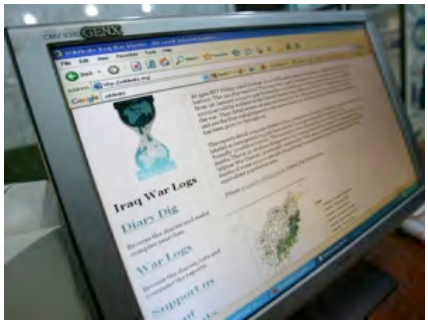
The police will tend to exploit that by saying "tell us about this disclosure, do you know anything about it?" If you then say "I do not want to speak about that matter" or "I am busy," the police will respond with "are you refusing to assist a police investigation?" They will typically then allege that it is some sort of crime to refuse to assist with a police investigation.

Your response must be this: "are you accusing me of committing a crime or are you suggesting I may be about to commit a crime in this conversation?" The police will answer either "no, we do not suggest that" in which case you can say "OK, goodbye, I am busy now." Or they will say "yes, it is a crime to not answer police during the course of an investigation."

It is your task to get them to make that allegation. You must structure your replies to get them to make an allegation against you in relation to the question. Once they make that allegation that you are about to commit a crime by refusing to cooperate with the police, your response is then to say: "you are making a serious allegation against me, you are suggesting that I am or may be about to commit a crime. Under that circumstance I cannot possibly engage in further conversation without speaking to my lawyer."

Don't use your home computer

One thing to be sure to avoid is using your home computer to send out emails that identify you as a source. Or, to Google or web-search anything to do with your case, such as press publicity, the names of your contact, who is helping you get out the information.



How authorities may investigate you

There are two types of investigating efforts. One is to try and get a list of suspects. The other is, if [they] already have a suspect, to try and confirm that, that suspect is the genuine source.

Both of those types of investigations can use, de facto, certain information that came out of your home computer, or your office computer, or another computer that is affiliated with you.

They can also be done retrospectively; ISPs keep record of every single web-search that you have done, in most European countries.

Similarly in the United States, big security agencies will keep these records, or, Google, Yahoo, or other web-search services, will keep those records.

So if you are going to use a computer to establish an email contact, or you're going to use a computer to search for information about what you are doing, do it out of the home, or out of your office.

The same goes for using your home phone, or any mobile telephone that is associated with you.

How to use your phone

Now 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 whom are facilitating, getting that information out, or 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. That should be paid for in cash, and preferably bought by someone else, or bought second-hand.

Now in some countries, 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, whom 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 any other 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 whom 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 off; 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.

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 through to in the end, reform 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, please go to http://www.wikileaks.org or https://sunshinepress.org

"You do not become a 'dissident' just because you decide one day to take up this most unusual career. You are thrown into it by your personal sense of responsibility, combined with a complex set of external circumstances. You are cast out of the existing structures and placed in a position of conflict with them. It begins as an attempt to do your work well, and ends with being branded an enemy of society." — Václav Havel, Czech playwright, poet and politician

The flood was predicted — so was the royal commission

Press release
Whistleblowers Action Group Qld
30 January 2011

MORE than fifteen years ago, flood professionals in the state public service predicted that another 1974 flood would come to South East Queensland about this time.

They also predicted that there would be a royal commission.

2013 ± 2.5 years is how they expressed the year that it was likely to occur — in lay terms, this means that another 1974 flood would come sometime during the five wet seasons from 2010/11 to 2014/15. That prediction eventuated

The prediction about the royal commission has also eventuated. That prediction was based on what the flood professionals saw that local and state governments were doing, or failing to do, with the hydrologic and hydraulic information that the flood professionals were presenting to government.

A lot of this information and expertise has been lost since the two decades of flood studies that followed the 1974 floods. The Queensland community needs to recover this vital information.

This loss of information occurred with the natural retirement of men and women, 40 years or older, who worked on the flood studies in the two decades following 1974. This loss of information was exacerbated further by:

1. The alleged rough removal of hundreds of senior public servants from government agencies upon the election of the Goss government;
2. The alleged mistreatment of whistleblowers who came forward with disclosures about flooding and development matters after the Fitzgerald reforms were perceived to have been implemented;
3. The politicization of the public services at state and local government levels, through such changes as the loss of tenure for Senior Executive Service and other principal appointments, and through the role played by ministerial advisors;
4. The "de-engineering" of the public service agencies involved in flood engineering;
5. Circumventions of the Freedom of Information Act, and the tactics used to deny knowledge of relevant issues.

"These professionals are unlikely to have confidence in the Flood Commission as it is presently structured," Mr Gordon Harris, President of Queensland's Whistleblower organisation, said today. "This is the Forde Inquiry without Forde — most other players are the same, including Premier Bligh who commissioned the 1998 Forde Inquiry as Minister for Families."

"We need a Fitzgerald type inquiry, one that follows the disclosures. But we also need more protection for whistleblowers. Protection did not occur for the police whistleblowers in the Fitzgerald Inquiry, such as Inspector Col Dillon, at the hands of the post Fitzgerald Queensland Police Force," Mr Harris said.

"We do not need another Forde type of Inquiry, one that limits itself to restricted terms of reference and political interference, as did the Forde Inquiry when clear allegations of cover-up by state government came before that inquiry. Bans on any inquiry into the role of the state government in wrongdoing and maladministration, including cover-ups, regarding flooding and development issues, cannot be allowed to occur again," he said.

The creeks in the Toowoomba region are not the only flood situations in Queensland where there may be serious risk to life. Other situations are alleged, for areas housing greater populations, populations dominated by the young and by the retired, concentrated in layout, subject to sudden night flooding, with minimum prospects for evacuation.

"Current situations must be identified. Knowledge of the role of government developers and private developers in generating these situations is vital to efforts to arrest such risks and return the community to acceptable levels of hazard from flooding." Mr Harris said.

The Whistleblowers Action Group recommends that a prominent whistleblower, with appropriate experience from these post 74 flood studies, be placed on the commission.

To this end, Whistleblowers Action Group is writing to Premier Bligh and Mr Langbroek, Leader of the Opposition, to seek the appointment of a whistleblower with eminent credentials for any review of flood management in Queensland to the royal commission.

We are seeking bipartisan support to such an appointment because the involvement by such whistleblowers in flood management in all parts of Queensland, after the 1974 floods, included service under governments of both the Labor and Coalition Parties.

When it became known that one flood professional, code-named *Warrior* by the public service bureaucrats, had blown the whistle on the Queensland Government, numbers of hydrologists, scientists, engineers and economists approached *Warrior* with their concerns about particular decisions by government agencies involving water engineering

The community can benefit from that same dynamic, if those flood professionals with knowledge of the risks in place have sufficient confidence in the commission to come forward.

The 2010/11 wet season is only the first season of the predicted window of wet seasons when major flooding is likely to occur. If we have entered a period where major flooding has an increased likelihood, it behoves the Queensland Government to do its best to obtain all "lost" information, in some cases, from officers who may have been severely mistreated by the system which they served and to which they had offered their expertise.

"There are other choices," Mr Harris claimed today. "We support calls by the legal profession in this State for a restructure to the Flood Commission, but for stronger reasons."

It is noted that Tony Fitzgerald, prior to his famous inquiry, completed

a formal opinion for the Brisbane City Council on improving flood mitigation and control legislation, according to information given to the group. When a commissioner between 1987 and 1989, he went beyond the original terms of his inquiry. This the Forde Inquiry failed to do with serious allegations against the government. Fitzgerald followed the disclosures made to his inquiry. Enough was not done, however, to protect, post the Fitzgerald Inquiry, the police who made his inquiry a success.

"We cannot make that mistake again," the President of Whistleblowers said. "We are seeking bipartisan support for a whistleblower to go onto the commission".

Contact: President Gordon Harris, through the Secretary on 07 3378 7232

January 28, 1994

An extract from Kim Sawyer's book *Trial with No Exit,* published in 2010 by Book Pal

Preface

THERE have always been whistleblowers. Whistleblowing has a long pedigree. Whenever authority is challenged, whenever paradigms change and whenever there is the singular one, there is a whistleblower. And that whistleblower is often the singular one. Some whistleblowing is better defined, and some whistleblowers are better remembered, than others. Jesus was a whistleblower. He blew the whistle on the moneylenders in the temple. Gandhi was also a whistleblower. He blew the whistle on the permit system for Indians working in South Africa. William Wilberforce was a whistleblower. He blew the whistle on slavery. Money lending, permits and slavery were all corrupt practices. They were corrupting the freedom of the individual. Jesus, Gandhi and Wilberforce dared to speak when others were silent.

The whistleblowers of today are more likely to work for firms and their whistleblowing is more likely to be about those firms. They speak out about fraud, and waste, and bullying. Corruption is the tumour of our age and whistleblowers are its antidote. Anyone can be a whistleblower. All that is required is to be in the wrong place at the wrong time; and not to remain silent. The trial begins and often there is no exit.

Trial With No Exit is the story of the trial of the whistleblower. In 1925, Franz Kafka's *The Trial* was published. Joseph K was a bank official arrested for an unknown crime. Joseph K's life and reputation inverted and he was executed. Was K a whistleblower? He could have been. In 1944, Jean Paul Sartre's *No Exit* was published. Three individuals, among them Joesph Garcin, in their afterlives are locked in a closed room. They look down at their past as absentees. Joseph Garcin was a journalist, shot for daring to speak out against a war. He was a whistleblower.

Franz Kafka

In *Trial With No Exit,* Joseph K and Joseph Garcin are brought together. They meet S. S is real rather than fictitious. S is a whistleblower but, unlike Joseph K, S knows his crime. He has committed a truth. He is not to be executed. He is to be minimised. The story begins with the testimony of S before a Senate committee. The testimony is real, but the conversations with others, before and after, are not. This is a story of the evolution of a whistleblower. It is the trial within where the real meets the fictional.

When S meets Joseph K and Joseph Garcin in the third act of this play, his evolution as a whistleblower is complete. The conversation could take place at any time and in any space. It is a conversation between outsiders whose lives have inverted.

ACT I

SCENE I: January 28, 1994

A coffee shop in Collins Place, Melbourne. Two men in suits share a table and some commonality. The café table is small, set in a small area to one side of a larger open area. On the table, there is a jug of water and two glasses. Each man has a sandwich on their plate and a coffee in a mug. They both have briefcases at their side, and a monograph on the table. Gideon is the taller of the two men. He sits upright and has a conservative bearing. S leans forward and gesticulates often. There are people at other tables, but their conversation is lost in lunchtime liaisons.

When S first met Gideon, he thought how respectable Gideon was. Gideon was the lost public servant of a lost era, honest, naïve and straight. Gideon didn't need a CV. He had his own brand. If jobs were served in combos, Gideon would have been your bank manager and your undertaker. He was your accountant for life, a lifetime annuity.

Like all witnesses to a Senate inquiry, Gideon and S were linked. Senate inquiries bring odd combinations together; crayfishermen and cops, teachers and truck drivers, bank managers and boilermakers. All with a commonality among their diversity, the need to make a statement and to be heard. Senate witnesses provide democracy's performance appraisal. And sometimes that appraisal is an F.

Whistleblowing witnesses are linked more than most. Like Sartre's Garcin, Estelle and Inez, whistleblowers are looking for an exit. A Senate inquiry is an exit sign; it could be a staircase to justice. Staircases usually either go up or down. For whistleblowers, the staircase often does both; one step up, two steps down, that's the whistleblower staircase.

Gideon and S met on the day of their testimonies. Their purpose had converged. They were both looking for an exit from the trial called whistleblowing.

S: I liked your submission. It was compelling.

Gideon: Whistleblowers do tend to compel. We are people of compulsion.

S: Your submission was credible. That's what this inquiry needs, a whistleblower to believe in.
Gideon: This inquiry would have happened without me and without you. Whistleblowers are now a story in their own right.
S: I suppose there will always be public servants serving themselves and not the public. And there will always be other public servants watching those public servants serve themselves.
Gideon: Most public servants watch in silence. It often seems we're the only ones on watch duty.
S: Watch duty. Yes, I suppose that's our job description. We watch and we speak; but we are rarely believed; at least not until after a catastrophe. Where there's a bank failure, there's a whistleblower.
Gideon: Yes, one that wasn't believed. Everyone knows how important banks are. Politicians might not know how to manage the economy, but they can use an ATM.
S: (*laughing*) Whistleblowers are ATMs. We are Automatic Telling Machines. We tell to anyone who might believe us. It's our search for self-belief.
Gideon: (*mocking*) Not everyone accepts our deposits though.
S: You're right. Our checks do seem to bounce a lot.
Gideon: I think they're non-negotiable.
S: You blew the whistle to the regulator, right?
Gideon: Yes, the regulator of last resort. They became the regulator of last response.
S: Judging from your submission, they were the regulator of non-response. (*with emphasis)* **Gideon**: Well they did respond, but not the way I expected. I wrote to the regulator about problems in my firm. The regulator telephoned my manager and within twenty-four hours I was dismissed.
S: An instant response. Sack the messenger!
Gideon: It was mercifully quick. My twenty-four year career ended in twenty-four hours. There's no gold watch for whistleblowers and no golden parachutes. Whistleblowers get the poison pills.
S: In my case, it's taken more than twelve months to force me out. They put me on the slow drip. They charged me with misconduct and took away my office. Someone even put a private detective on to me.
Gideon: Now that's more like it. That's the harassment we expect.
S: I issued a writ last week in the Supreme Court. I'm on the legal highway now.
Gideon: It's more like a legal ring road. You're always circling around the main issue. Be careful of diversions.
S: A lot of people have warned me about the legal traps. That's the whistleblower's plight.
Gideon: I haven't heard of a whistleblower yet who stays with their firm. Blow the whistle and you're out the door and into the courtroom. You become an instant lawyer. It's our metamorphosis.
S: I'm not sure I'm prepared for that.
Gideon: Well, you're going to have to get used to the fact that your briefs are no longer what you wear under your pants.
S: I don't want to be a lawyer. How do you meet your legal expenses?
Gideon: I survive on commissions. I was blacklisted in the industry.
S: Yes, I imagine I could be blacklisted in universities.
Gideon: Whistleblowers always need another career. They need to get on another list, a list with no references. Whistleblowers have to use a lot of liquid paper.
S: You could call it a white-out list.
Gideon: It's called reinventing yourself.
S: A born again whistleblower.
Gideon: Born again Christianity is easier. There all you do is drop to your knees and let Jesus do the work. The born again whistleblower has to get rid of their whistle. That's not easy.
S: I hadn't heard of the word whistleblower until last year. I don't like it much. I wrote a letter to a newspaper once about whistleblowing. They inserted a cartoon in the middle of the letter with a group of people sitting around a table blowing whistles. That's how a lot of people see us, playing games. It would be great to have another word.
Gideon: What would you suggest? Snoop, snitch, dobber, lagger, rat, mole? If the term whistleblower becomes acceptable, we're halfway there.
S: I suppose we're stuck with whistleblower. They say words change their meaning over time. Maybe someday whistleblowing will be acceptable, even cool.
Gideon: The cool whistleblower. Now that would be an oxymoron.
S: If whistleblowers became cool, they would need a new word for us.
Gideon: Like citizens-against-corruption-who-get-sacked. Or people-in-the-wrong-place-at-the-wrong-time-who-want-to-be-in-the-right-place-at-the-right-time.
S: Troublemakers-who-make-trouble-for-troublemakers-who-cause-real-trouble would be my choice. It rolls off the tongue. They say Shakespeare invented more words than anyone else. Did you know he invented chaos?
Gideon: (*laughing*) No, bureaucrats invented chaos. Chaos is an acronym for Civil Hierarchy for Administrative Obfuscation and Servility.
S: As in the Australian Public Service.
Gideon: You're too harsh. There are plenty of other bureaucracies that specialise in chaos.
S: What do you think of the senators? Do you think they understand us? I read your submission. Your evidence was credible.
Gideon: Evidence, yes we've all got that. It's sometimes called the truth. But truth is uncomfortable. Better to look at the whistleblower. Are they credible or incredible? Are they vindictive or venerable? Would they blow the whistle on me? Never mind the truth; it's the whistleblower that matters. Don't let the truth get in the way of old fashioned prejudice.


Kim Sawyer

Whistleblowers Australia contacts

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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
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WikiLeaks: the cat's out of the bag

WikiLeaks continues to be a hot media item, due both to the revelations from documents on its website and through reporting of the travails of Bradley Manning and Julian Assange. The scale and ferocity of US government attacks on WikiLeaks suggest the threat that leaking poses to powerful groups with secrets to hide.

WikiLeaks is the only the first of what is likely to be a host of online leaking services. In Australia, the new website UniLeaks offers to produce stories based on university documents submitted.

Leaking does not depend on the Internet: many leaks occurred in earlier decades, most famously the Pentagon Papers during the Vietnam War. Most of these leaks were to the mass media. What the Internet offers — with the special features provided by WikiLeaks and other sites like it — is a relatively safe means of leaking without the usual constraints of the mass media, such as vulnerability to government pressure and commercial imperatives. Yet even today leaking to the mass media remains a viable option, sometimes the most effective one.

The surge of attention to leaking has given whistleblowing a higher profile. For potential whistleblowers, it has also highlighted leaking, while remaining anonymous and staying in one's regular job, as a potentially attractive option compared to speaking out and becoming an obvious target for reprisals.

Until now, Whistleblowers Australia has concentrated on providing information, contacts and advice for actual and potential whistleblowers who do not hide their identity, and advocating better protection for whistleblowers. It is time to consider putting more emphasis on leaking. — *Brian Martin*

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.

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