

"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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Newsletter of Whistleblowers Australia



Choose your whistle!

Support grows for corruption informants

Tom Allard
Sydney Morning Herald
6 June 2012, p. 5

AUSTRALIANS overwhelmingly support protections for whistleblowers and their right to go to the media, according to a landmark poll.

Debunking the notion that Australians dislike “dobbers,” the nationwide survey also adds impetus to calls for the federal government to introduce promised legislation to safeguard whistleblowers.

Sampling the views of 1211 people, the survey found four out of five endorsed the principle that people should be “supported” in revealing inside information that exposed wrongdoing.

Even more people — 87 per cent of respondents — said whistleblowers should be able to use a media organisation to draw attention to corruption and other illegal, unethical and unsavoury activities.

Most felt that whistleblowers should first go through official channels. However, half of those surveyed believed “too much” information was kept secret. Twenty-six per cent felt the “right amount” of information was disclosed, while 7 per cent said more information should be under wraps.

A.J. Brown, the leader of a team of academics from Griffith and Melbourne universities examining whistleblowing, said the survey contradicted the notion that Australia had an “anti-dobbing” culture.

“There has been a fair amount of opinion that values like loyalty and mateship are so much part of the national psyche, Australians are hostile to recognising whistleblowing,” Dr Brown said.

According to the survey, 60 per cent supported whistleblowers going public, even if it involved exposing the misconduct of a family member or friend. Approval was higher if a fellow staff member (77 per cent) or boss (82 per cent) was the target.

Andrew Wilkie, the independent MP and former intelligence analyst

who was sacked after he accused then-prime minister John Howard of misleading the public before the Iraq War, said whistleblowers usually paid a heavy price for going public.

Stress, lost income, former colleagues’ hatred, and family breakdown were the lot of the whistleblower, Mr Wilkie said.

Australia has a patchwork of whistleblowing protections at the state and territory level but many are seen as inadequate.

Last year, Victoria’s ombudsman, George Brouwer, said “extensive alterations” were needed to the state’s Whistleblower Protection Act.

At the federal level, there is no legislated protection for whistleblowers in government agencies, despite the reform’s inclusion in the agreement of the three independent MPs with the Prime Minister, Julia Gillard, to form a minority government in 2010.

The legislation was supposed to be introduced in July last year. A second deadline of December 31 was also missed.

The *Herald* understands the proposed bill has already been redrafted more than 100 times, such is the sensitivity of the topic, particularly among bureaucrats.

The Special Minister of State, Gary Gray, has told Mr Wilkie and others that the government hasn’t dropped the reform entirely. His spokesman told the *Herald* it would be delivered before the next election.

The next stage of the universities’ project is a global online survey, which can be accessed at

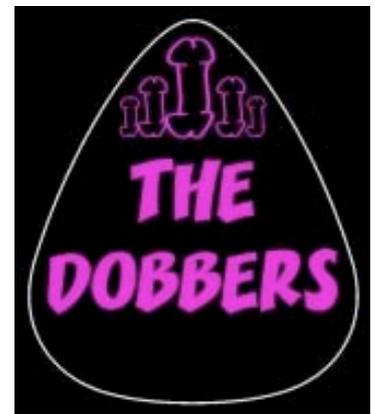
<http://whistleblowingsurvey.org>



English dobbers



German dobbers



Scottish dobbers



US dobbers

A search on the web reveals pictures of dobbers from several countries. But where are the Australian dobbers?

Queensland medical investigator blows whistle on CMC

A former Queensland medical investigator fears her hospital malpractice concerns will not be properly investigated because of conflicts of interest.

Darren Cartwright
Australian Associated Press
21 March 2012

JOANNE Barber worked as a senior investigator with the former Medical Board of Queensland and the ethical standards unit at Queensland Health until 2010.

The Brisbane woman also worked for Queensland Police and as a fraud investigator for WorkCover, and is now on sick leave from Queensland Health.



Jo Barber

Barber has concerns about malpractice, doctors throwing tantrums in surgery and a junior doctor who could not perform a suture after an investigation at Townsville's cardio thoracic unit in November 2007.

She reported back to the Crime and Misconduct Commission (CMC) and the Health Quality and Complaints Commission, and claims they did not act.

Barber this week tried to raise the concerns again with the CMC — but found she would have to deal with the same person who did not act in 2007.

"I thought 'oh my god this is a joke, this isn't for real'," she told reporters.

"I'm suggesting the CMC has played a part in this. I'm not saying it

was deliberate, but I am complaining to the same person.

"How can they be independent when they are a part of it.

"I have tried to voice this so many times."

Barber says she conducted 30 hours of interviews in regards to the 2007 complaints.

She said one junior doctor cut a man's leg below the knee to look for a vein to use in by-pass surgery, when he had been told to take it from the thigh.

"That patient with two cuts to his leg would have been told we were going to take a vein out of here but it was inappropriate so we took one out of here," she said.

When the complaints against doctors were corroborated by nurses and anaesthetist who were in the operation theatre, she asked for more resources but nothing happened.

Patient records do not reflect what occurs in the operating theatre, she says.

"There are people out there who are not able to voice concerns about their own treatment because it is hidden from them," Barber said.

"The records do not reflect what has actually occurred.

"When you interview the scrub nurses, theatre nurses and anaesthetist, they are the only ones who give direct evidence what happens.

"There has been inaction."

Barber says she has tried to raise her concerns with an MP in 2008.

Independent MP Rob Messenger this week encouraged her to meet with the CMC, and they will meet again on Wednesday.

Messenger, who was the MP who raised concerns about Dr Jayant Patel on behalf of Bundaberg Hospital whistleblower Toni Hoffman, said Barber had far more evidence.

"Toni Hoffman came forward with evidence against one doctor in one hospital," Messenger said.

"With Jo, she was the gatekeeper for all the investigations for the medical board.

"There's literally hundreds of cases."

Messenger wants the CMC to guarantee a thorough investigation, or have the matter referred to a Royal Commission.

The CMC has been approached for comment.

CIT on notice to stop staff bullying

Noel Towell and Lisa Cox
Canberra Times, 13 April 2012

THE Canberra Institute of Technology has been ordered by the ACT government to put its house in order after breaking workplace laws in its failure to protect its workers from bullying.

A scathing report by WorkSafe ACT, finding that CIT's systems were so poor that they effectively protected bullies and left staff afraid to speak out about their treatment, has forced Education Minister Chris Bourke to intervene, demanding action.

The institute has been beset by harassment complaints with seven serious cases reported at three of the institution's work sites between 2008 and this year, with former victims alleging there was a culture of bullying and harassment to the third level education provider.

Work Safety Commissioner Mark McCabe found there was a culture at CIT that discouraged staff from reporting and describes a workplace rife with allegations of nepotism, unfairness and uneven workloads.

Even when CIT staff made complaints, Mr McCabe found, the processes were inadequate, unfair and victims were denied natural justice.

An earlier report into the CIT by consultants KMR, quoted by WorkSafe, found the institution was suffering from a "very low level of morale" and staff believed there was lack of confidence in management style of CIT's senior leaders.

"The ... investigation found that the CIT had breached its responsibilities under the territory's health and safety legislation," Mr McCabe said yesterday. "WorkSafe ACT's inspector determined that the CIT does not have an adequate system for preventing or responding to allegations of bullying and harassment in the workplace."

An Improvement Notice has been issued requiring the CIT to make a number of improvements to its systems regarding prevention and management

of bullying and harassment of staff. The CIT has six months to comply with a number of specific requirements in the notice, designed to achieve this outcome.

Former CIT hospitality teacher Patrick Reubinson, one of the complainants, said staff who complained about bullying were singled out and “intimidated.”

“The whole system was against you,” Mr Reubinson said.

Pursuing the problem over a number of years had tested all of the staff involved.

“It’s taken a steely determination to get this far,” he said.

“It’s finished our careers.”

Dr Bourke issued his ministerial direction yesterday after receiving the WorkSafe report, requiring CIT to put systems in place to ensure there is no repeat of the crisis.

“I’m very disappointed that CIT has been issued with an improvement notice by the Work Safety Commissioner,” the minister said.

“This is why I’ve also issued a directive to CIT under the CIT Act to report to me on a weekly basis their progress under the 10-point plan for improvement issued by the work safety commissioner.”



CIT restaurant

CIT chief executive Adrian Marron said: “It [the report] is sobering reading for us but we accept directions that are in the report and we are absolutely committed to working as hard as we can to put them into practice. Mark McCabe has said that our polices and procedures are not up to scratch and we have to do something about that.

“What Mark has said that at the time [of the bullying incidents] we did fail to provide a safe workplace.” Australian Education Union acting ACT branch secretary Glenn Fowler

praised the courage and tenacity of CIT staff who had complained.

“The WorkSafe ACT findings that CIT has failed to meet its duty under both the Work Safety Act 2008 and Work Health and Safety Act 2011 provide a solid vindication of the efforts made by the teachers who have pursued justice over the last four years,” he said.

Police lack appetite for cold — or hot — cases

Jack Waterford

Canberra Times, 10 June 2012

I was not greatly surprised by the allegation, this week, that top cops in the Australian Federal Police had had no great appetite for a successful investigation into the AWB [Australian Wheat Board] wheat for oil scandal, and denied it resources until the senior investigator (says he) took the hint and pulled the plug on the case.

In my experience, AFP leaders have never had much enthusiasm for conducting successful investigations into people close to the government of the day, particularly, but not only, if the government of the day happens to be a conservative one.

Contrarywise, the force has sometimes continued investigations that have served extraneous political purposes long after it has clear to everyone that no criminal offence has been disclosed. This occurred, for example, during the Haneef affair.

The allegation about a want of will behind the wheat for oil scandal was made by the officer in charge of the inquiry in a court document. It bears a certain resemblance to the mysterious failure of an investigation into how a top secret document passed from the office of Alexander Downer to Andrew Bolt, a Melbourne polemicist. The “leak” was used to attack the character of Andrew Wilkie, a discontented intelligence officer. At the time the “leak” was reluctantly passed to the AFP, a senior cop said to me that a detective who could not solve that “could not find his bum with both hands”.

Alas, no prosecution followed. Indeed, the only leak triumphs of the AFP have involved two hapless

Aboriginal public servants, whose prosecutions, no doubt by entire coincidence, served political ends.

But those who think there is something new in this might harken to my tale of Australia’s longest-running unfulfilled FOI [Freedom of Information] request, lodged originally by me on December 2, 1982, the day FOI began. It was for appendix H of the report of the 1981 royal commission into meat substitution.

It was held back, we were told, so that the AFP and Director of Public Prosecutions could investigate charges against prominent unnamed people accused of involvement in pretending that kangaroo, horse, donkey and other exotic viands were prime Australian beef sent to America. Some, we knew from gossip, had very powerful political connections.

The Department of the Prime Minister and Cabinet in early 1983 “deferred” my request, saying the investigation was still continuing, and that disclosure might compromise the ongoing inquiries. Last August I renewed my request.

I got a letter this week: PM&C is still “consulting” with other agencies about giving me access. But it is worried that the business of consulting interested parties and agencies — gosh, who could these be — about its own files on the subject might be too onerous a task for it. That makes it 10,782 days since I filed the request, with no sign, even since I renewed it 188 days ago, of being any closer to finding out what stumped our plod.

Scientist who warned of caustic dust from Ground Zero wins job back

Cate Jenkins was fired from her job as a chemist after accusing the EPA of deliberately covering up the dangers of 9/11 wreckage dust

Suzanne Goldenberg
guardian.co.uk, 7 May 2012

A GOVERNMENT scientist sacked for exposing the dangers to firefighters from the caustic air at Ground Zero in the days after 9/11 got her job back on Monday.

A federal court ordered that Cate Jenkins, a chemist at the Environ-

mental Protection Agency, be reinstated to her job with back pay.

Her lawyer said the decision, although based on matters of legal process, amounted to vindication for Jenkins's claims that the EPA had covered up the danger posed to first responders and others in lower Manhattan from the asbestos and highly corrosive dust that rose from the wreckage of the World Trade Center.

It was also a rare victory for whistleblowers, said lawyer Paula Dinerstein. "This doesn't happen that often."



Cate Jenkins

Jenkins, who has spent more than 30 years at the EPA, was the first agency official to warn of the dangers of the caustic dust rising from the ruins of the World Trade Center.



Firefighters after the 9/11 attacks

The dust, which had dangerously high pH levels, was so corrosive it caused chemical burns to the lungs of firefighters and other rescue teams. Hundreds of workers spent weeks at the scene without protective gear such as respirators.

Subsequent research has shown as many as two-thirds suffered permanent lung damage.

Medical experts now believe much of the health effects could have been prevented if workers were issued proper safety gear.

At the time, however, Christine Todd Whitman, then head of the EPA,

claimed there were no readings to indicate a health hazard. Whitman has since said the Bush administration did not want to cause panic.

But Jenkins accused the EPA of deliberately concealing the dangers. She noted that the EPA had been downplaying the air quality hazards from such rubble since the 1980s, and that European standards were far more stringent.

After repeating the charges to Congress, Jenkins was harassed by her superiors. She was eventually sacked in late 2010 after being accused of physically threatening her supervisor.

Jenkins, who is a polio survivor, has a petite frame. Her male supervisor is over six feet tall.

In its decision, the Merit Systems Protection Board said Jenkins had been wrongly denied her right to due process on a number of counts.

The ruling marks the second time in her long career that Jenkins has fought the EPA — and won.

In the 1990s, she was transferred out of her job after accusing Monsanto of falsifying a study on the cancer risk from exposure to Agent Orange. An administrative judge later ruled she had been wrongly transferred.

Drone wars and state secrecy — how Obama became a hardliner

He was once a liberal law professor who campaigned against the Iraq war. Now, according to revelations, the US president personally oversees a "kill list" for drone strikes in Yemen and Pakistan. Then there are the CIA renditions, increased surveillance and a crackdown on whistleblowers. No wonder Washington insiders are likening him to "George W Bush on steroids."

Paul Harris

The Guardian, 2 June 2012

AMOS Guiora knows all about the pitfalls of targeted assassinations, both in terms of legal process and the risk of killing the wrong people or causing civilian casualties. The University of Utah law professor spent many years

in the Israel Defence Forces, including time as a legal adviser in the Gaza Strip where such killing strikes are common. He knows what it feels like when people weigh life-and-death decisions.

Yet Guiora — no dove on such matters — confessed he was "deeply concerned" about President Barack Obama's own "kill list" of terrorists and the way they are eliminated by missiles fired from robot drones around the world. He believes US policy has not tightly defined how people get on the list, leaving it open to legal and moral problems when the order to kill leaves Obama's desk. "He is making a decision largely devoid of external review," Guiora told the *Observer*, saying the US's apparent methodology for deciding who is a terrorist is "loosey goosey."



Amos Guiora

Indeed, newspaper revelations last week about the "kill list" showed the Obama administration defines a militant as any military-age male in the strike zone when its drone attacks. That has raised the hackles of many who saw Obama as somehow more sophisticated on terrorism issues than his predecessor, George W Bush. But Guiora does not view it that way. He sees Obama as the same as Bush, just much more enthusiastic when it comes to waging drone war. "If Bush did what Obama has been doing, then journalists would have been all over it," he said.

But the "kill list" and rapidly expanded drone programme are just two of many aspects of Obama's national security policy that seem at odds with the expectations of many supporters in 2008. Having come to

office on a powerful message of breaking with Bush, Obama has in fact built on his predecessor's national security tactics.

Obama has presided over a massive expansion of secret surveillance of American citizens by the National Security Agency. He has launched a ferocious and unprecedented crack-down on whistleblowers. He has made more government documents classified than any previous president. He has broken his promise to close down the controversial Guantánamo Bay prison and pressed on with prosecutions via secretive military tribunals, rather than civilian courts. He has preserved CIA renditions. He has tried to grab broad new powers on what defines a terrorist or a terrorist supporter and what can be done with them, often without recourse to legal process.

The sheer scope and breadth of Obama's national security policy has stunned even fervent Bush supporters and members of the Washington DC establishment. In last week's *New York Times* article that detailed the "kill list", Bush's last CIA director, Michael Hayden, said Obama should open the process to more public scrutiny. "Democracies do not make war on the basis of legal memos locked in a [Department of Justice] safe," he told the newspaper.

Even more pertinently, Aaron David Miller, a long-term Middle East policy adviser to both Republican and Democratic administrations, delivered a damning verdict in a recent issue of *Foreign Policy* magazine. He wrote bluntly: "Barack Obama has become George W Bush on steroids."



Barack Obama

Many disillusioned supporters would agree. Jesselyn Radack was a justice department ethics adviser under Bush who became a whistleblower over violations of the legal rights of "American Taliban" John Walker Lindh. Now Radack works for the Government Accountability Project, defending fellow whistleblowers. She campaigned for Obama, donated money and voted for him. Now she has watched his administration — which promised transparency and whistleblower protection — crack down on national security whistleblowers.

It has used the Espionage Act — an obscure first world war anti-spy law — six times. That is more such uses in three years than all previous presidents combined. Cases include John Kiriakou, a CIA agent who leaked details of waterboarding, and Thomas Drake, who revealed the inflated costs of an NSA data collection project that had been contracted out. "We did not see this coming. Obama has led the most brutal crackdown on whistleblowers ever," Radack said.

Yet the development fits in with a growing level of secrecy in government under Obama. Last week a report by the Information Security Oversight Office revealed 2011 had seen US officials create more than 92 million classified documents: the most ever and 16 million more than the year before. Officials insist much of the growth is due to simple administrative procedure, but anti-secrecy activists are not convinced. Some estimates put the number of documents wrongly classified as secret at 90%.

"We are seeing the reversal of the proper flow of information between the government and the governed. It is probably the fundamental civil liberties issue of our time," said Elizabeth Goitein, a national security expert at the Brennan Centre for Justice. "The national security establishment is getting bigger and bigger."

One astonishing example of this lies high in the mountain deserts of Utah. This is the innocuously named Utah Data Centre being built for the NSA near a tiny town called Bluffdale. When completed next year, the heavily fortified \$2bn building, which is self-sufficient with its own power plant, will be five times the size of the US Capitol in Washington DC. It will

house gigantic servers that will store vast amounts of data from ordinary Americans that will be sifted and mined for intelligence clues. It will cover everything from phone calls to emails to credit card receipts.

Yet the UDC is just the most obvious sign of how the operations and scope of the NSA has grown since the 9/11 terrorist attacks. Under Bush, a key part was a secret "warrantless wiretapping" programme that was scrapped when it was exposed. However, in 2008 Congress passed a bill that effectively allowed the programme to continue by simply legalising key components. Under Obama, that work has intensified and earlier this year a Senate intelligence committee extended the law until 2017, which would make it last until the end of any Obama second term.

"Obama did not reverse what Bush did, he went beyond it. Obama is just able to wrap it up in a better looking package. He is more liberal, more eloquent. He does not look like a cowboy," said James Bamford, journalist and author of numerous books about the NSA including 2008's *The Shadow Factory*.

That might explain the lack of media coverage of Obama's planned changes to a military funding law called the National Defence Authorisation Act. A clause was added to the NDAA that had such a vague definition of support of terrorism that journalists and political activists went to court claiming it threatened them with indefinite detention for things like interviewing members of Hamas or WikiLeaks. Few expected the group to win, but when lawyers for Obama refused to definitively rebut their claims, a New York judge ruled in their favour. Yet, far from seeking to adjust the NDAA's wording, the White House is now appealing against the decision.

That hard line should perhaps surprise only the naive. "He's expanded the secrecy regime in general," said Radack. Yet it is the drone programme and "kill list" that have emerged as most central to Obama's headline national security policy. In January 2009, when Obama came to power, the drone programme existed only for Pakistan and had seen 44 strikes in five years. With Obama in office it ex-

panded to Afghanistan, Yemen and Somalia with more than 250 strikes. Since April there have been 14 strikes in Yemen alone.

Civilian casualties are common. Obama's first strike in Yemen killed two families who were neighbours of the target. One in Pakistan missed and blew up a respected tribal leader and a peace delegation. He has deliberately killed American citizens, including the radical cleric Anwar al-Awlaki in September last year, and accidentally killed others, such as Awlaki's 16-year-old son, Abdul-Rahman.

The drone operation now operates out of two main bases in the US, dozens of smaller installations and at least six foreign countries. There are "terror Tuesday" meetings to discuss targets which Obama's campaign manager, David Axelrod, sometimes attends, lending credence to those who see naked political calculation involved.

Yet for some, politics seems moot. Obama has shown himself to be a ruthless projector of national security powers at home and abroad, but the alternative in the coming election is Republican Mitt Romney.

"Whoever gets elected, whether it's Obama or Romney, they are going to continue this very dangerous path," said Radack. "It creates a constitutional crisis for our country. A crisis of who we are as Americans. You can't be a free society when all this happens in secret."

Death from the sky

• Popularly called drones, the flying robots used by Obama are referred to as unmanned aerial vehicles by the defence industry that makes them. The air force, however, calls them RPAs, or remotely piloted aircraft, as they are flown by human pilots, just at a great distance from where they are operating.



• The US air force alone has up to 70,000 people processing the surveillance information collected from drones. This includes examining footage of people and vehicles on the ground in target countries and trying to observe patterns in their movements.

• Drones are not just used by the military and intelligence community. US Customs and Border Protection has drones patrolling land and sea borders. They are used in drug busts and to prevent illegal cross-border traffic.

• It is assumed the Pentagon alone has 7,000 or so drones at work. Ten years ago there were fewer than 50. Their origins go back to the Vietnam war and beyond that to the use of reconnaissance balloons on the battlefield.

• Last year a diplomatic crisis with Iran broke out after a sophisticated US drone, the RQ-170 Sentinel, crash-landed on Iranian soil. Iranian forces claimed it had been downed by sophisticated jamming technology.

Afghan war whistleblower Daniel Davis:

"I had to speak out — lives are at stake"

Soldier wrote detailed report claiming US generals "have so distorted the truth ... the truth has become unrecognisable"

Paul Harris
guardian.co.uk, 14 April 2012

LIEUTENANT Colonel Daniel Davis claims US generals are lying to the public about the military campaign in Afghanistan.

"I am — how do you say it? — persona non grata," said Lieutenant-Colonel Daniel Davis, as he sat sipping a coffee and eating a chocolate sundae in a shopping mall, just a subway stop from the Pentagon.

The career soldier is now a black sheep at the giant defence department building where he still works. The reason was his extraordinarily brave decision to accuse America's military top brass of lying about the war in Afghanistan. When he went public in

the *New York Times*, he was acclaimed as a hero for speaking out about a war that many Americans feel has gone horribly awry. Later this month he will receive a Ridenhour prize, an award given to whistleblowers that is named after the Vietnam war soldier who exposed the My Lai massacre.

Davis believes people are not being told the truth and said so in a detailed report that he wrote after returning from his second tour of duty in the country. He had been rocketed, mortared and had stepped on an improvised explosive device that failed to explode. Soldiers he had met were killed and he was certain that a bloody disaster was unfolding. So he spoke out. "It's like I see in slow motion men dying for nothing and I can't stop it," he said. "It is consuming me from the inside. It is eating me alive."

Davis, 48, drew up two reports containing research and observations garnered from his last tour. He was not short of material. As part of his job he had criss-crossed the country, travelling 9,000 miles and talking to more than 250 people. He had built up a picture of a hopeless cause; a country where Afghan soldiers were incapable of holding on to American gains. US soldiers would fight and die for territory and then see Afghan troops let it fall to the Taliban. Often the Afghans actively worked with the Taliban or simply refused to fight. One Afghan police officer laughed in Davis's face when asked if he ever tried to fight the enemy. "That would be dangerous!" the man said.

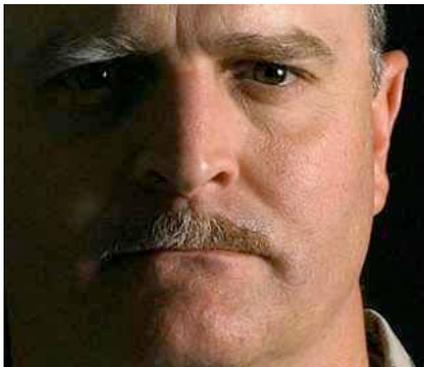
Yet at the same time Davis saw America's military chiefs, such as General David Petraeus, constantly speak about America's successes, especially when working with local troops. So Davis compiled two reports: one classified and one unclassified. He sent both to politicians in Washington and lobbied them on his concerns. Then in February he went public by giving an interview to the *New York Times* and writing a damning editorial in a military newspaper. Then — and only then — did he tell his own army bosses what he had done.

Davis pulled no punches. His report's opening statement read: "Senior ranking US military leaders have so distorted the truth when communicating with the US Congress and Ameri-

can people in regards to conditions on the ground in Afghanistan that the truth has become unrecognisable.”

The report detailed an alarming picture of Taliban advances and spiralling violence. Afghan security forces were unwilling or unable to fight, or actively aiding the enemy. That picture was contrasted with repeated rosy statements from US military leaders. His classified version was far more damning, but it remains a secret. “I am no WikiLeaks guy part two,” Davis said. He foresees a simple and logical end point for Afghanistan — civil war and societal collapse, probably long before the last US combat soldier is scheduled to leave. He says the Afghan army and police simply cannot cope and the US forces training and working with them know that, despite official pronouncements to the contrary. “What I saw first hand in virtually every circumstance was a barely functioning organisation often co-operating with the insurgent enemy,” Davis’s report said.

The document was also damning about the role of the US media in reporting the war. Ever since Vietnam, generals have slammed the press as a potential danger to military operations, but Davis’s report lambasted journalists for failing to question the official army line. He said the media were obsessed with getting “access” to military bases and generals and tempered reporting in order to maintain that situation. “Most of the media just takes the talking points and repeats them,” he said.



Lieutenant Colonel Daniel Davis

Davis has not been officially sanctioned — because his classified report remains secret, he broke no law — and the military has not set out actively to condemn him. Instead there has been a

mutated official response, while privately, Davis said, many colleagues have congratulated him for speaking out. Yet he is now experiencing a strange end to a military career to which he devoted his life. It included serving in Germany, both Iraq wars and then two tours in Afghanistan. He said it gave him pride and a sense of purpose in doing a greater good.

“I loved the army. There was nothing I have ever wanted to do more than this job since I started as a private back in 1985,” he said. That is a very all-American sentiment, but then so is Davis’s background. He was born the son of a football coach and grew up in Dallas, Texas. He is a born-again Christian who sings in a church choir. He said the decision to go public involved heavy “soul-searching.”

It has also made any future career advancement highly unlikely. “Maybe no one will listen, but I would not be able to sleep if I made no attempt,” he said.

What Davis wants — and what several politicians are lobbying for — are congressional hearings on the issue. He wants the generals grilled on his report and on how their comments compare with the evidence. But that needs the support of party leaders such as Democratic senator Harry Reid or Republican House speaker John Boehner, and that seems unlikely because such hearings would be a political minefield.

This only serves to infuriate Davis. “Wouldn’t you want to know the truth when you are making a war-and-peace decision?” Does he have any regrets? “There has never been a fraction of a question as to whether I did the right thing,” he said. “Lives are at stake.”

Whistleblower claiming visa fraud keeps his job, but not his work

Julia Preston

New York Times, 12 April 2012

It has been 17 months since Jack B. Palmer first made a quiet complaint through internal channels at Infosys, the giant Indian outsourcing company he works for, saying he suspected some managers were committing visa fraud. Since then, Mr. Palmer says, he

has been harassed by superiors and co-workers, sidelined with no work assignment, shut out of the company’s computers, denied bonuses and hounded by death threats.

But what has driven him nearly crazy, with bouts of depression alternating with rage, Mr. Palmer said, is the silence. Since last April, Mr. Palmer has been stewing day after day in his home near Montgomery, Ala., contemplating a blank Infosys screen on his computer and agonizing over whether his whistleblowing was worth it.

“They did the worst thing they could do to someone who is used to working 80 hours a week,” Mr. Palmer said. “They sit me at home and cut me off from everything. My life is floating in Infosys purgatory.”

Mr. Palmer’s experience since he filed his first report in October 2010 alleging misuse of business visitor visas for Indian workers is a cautionary tale about the perils of confronting a big corporation. Mr. Palmer’s travails have been compounded because he is in a small minority of Americans employed by the huge company, which has \$6.8 billion in annual revenues and about 15,000 employees in the United States alone, most from India.

A lawsuit Mr. Palmer filed against Infosys in February 2011 prompted federal prosecutors in Plano, Tex., where the company has offices, to open a criminal investigation that is still expanding. Federal investigators are looking into whether the company used workers from India for certain kinds of jobs here that were not allowed under their temporary visas, known as B-1. They are also examining numerous irregularities in the company’s hiring practices and documents, federal officials said.

Infosys, a fast-growing global business that has carefully built a reputation for integrity, vigorously denies Mr. Palmer’s accusations and is fighting his lawsuit in federal court in Montgomery.

“Any allegation or assertion that there is or was a corporate policy of evading the law in conjunction with the B-1 visa program is simply not accurate,” Ted Bockius, an Infosys spokesman, said Thursday. Infosys has been in discussions with the federal authorities, he said, and has complied

with a subpoena they issued. He added that fewer than 2 percent of the company's workers in the United States at any time are on B-1 visitor visas.

Mr. Palmer, 44, a software project manager for Infosys since August 2008, said he decided to sue the company, claiming he was punished for reporting corporate misdeeds, after executives pressured him to drop his complaints. But even as the months have crawled by, Mr. Palmer has not quit his Infosys job, fearing he will not get another one now that he is known as the guy who went up against the Indian company.

"The mental and physical challenge one takes on after blowing the whistle is excruciating," Mr. Palmer, who is known as Jay, wrote in a recent e-mail. After what he has seen, he said, "It will be hard for me to advise anyone to blow the whistle."

In Senate testimony and court documents, Mr. Palmer charged that Infosys brought Indian workers on short-term visitor visas, known as B-1, instead of longer-term temporary visas, known as H-1B, which are more costly and time-consuming to obtain. Infosys and other Indian technology outsourcing companies are consistently among the top users of H-1B visas, but in recent years intensified scrutiny by the State Department has made those visas more difficult to get.

The B-1 is for foreigners coming for conferences or to conduct training, consulting or contract negotiations who continue as employees of the company abroad. They are paid at the generally lower wage rates of the home country.

"This was totally about profit and not hiring Americans for jobs in the U.S. due to higher salary requirements," Mr. Palmer told the Senate Judiciary subcommittee on immigration in July. Besides Mr. Palmer, at least two other Infosys managers have provided information to investigators about alleged visa abuses.

Mr. Palmer is still on the Infosys payroll, but with no work and little communication from the company, and his moods swing erratically, he said. He has struggled with drinking, gained and lost 20 pounds and taken medication for anger and depression.

"You're around people every day, and then all of a sudden you are staring at four walls," Mr. Palmer wrote in an e-mail. "No one will hire me and I can't quit, so they just torture me. I have become numb and cumbersome to this world."

Menacing calls to his home and his mother's nearby prompted him to buy a handgun, which he straps to his ankle whenever he goes out. Always on edge, he drew the gun in February on a salesman who tried to approach his house to offer cleaning goods.

His lawyer, Kenneth J. Mendelsohn of Montgomery, has been both counsel and counselor, taking Mr. Palmer to baseball games and often speaking with him several times a day to keep his spirits from plunging.

Mr. Palmer said his troubles started soon after he filed his first report through an internal whistleblower channel designated by Jeffrey Friedel, a senior Infosys lawyer. The company had asked Mr. Palmer to write "welcome letters" for B-1 visa workers from India. He refused.

"Basically, these letters falsely claim the foreign employee is coming to visit rather than to work," Mr. Palmer said. "Past events started to click in my mind." Indian employees he had placed as full-time programmers on projects he managed told him they were struggling to survive in the United States on Indian wages. "The B-1 workers were fully employed in this country, and Infosys was charging its customers full-time wages," he said.

Within days of his report, Mr. Palmer said, it leaked within the company. One manager threatened to fire him, he said, and he received angry calls from co-workers. In November 2010, according to court documents, he found a death threat, neatly printed, on the chair in his office.

At first undaunted, Mr. Palmer sent barrages of e-mails describing apparent visa violations. But in December, he said, he received only about \$3,000 of a \$45,000 bonus he believed he had earned. Since Infosys has assigned him no work at all since last April, he received no bonus for 2011, losing one-third of his income.

A problem for Mr. Palmer is that the rules governing B-1 visas are so complex that skilled immigration

lawyers can disagree on them. Infosys has argued that its practices were legal under a provision that sometimes allows foreign employees to come on B-1 instead of H-1B visas.

Mr. Bockius, the Infosys spokesman, denied any harassment of Mr. Palmer: "We have not retaliated in any way."

But the judge in Alabama gave the first round of the whistleblower lawsuit to Mr. Palmer, denying Infosys's effort to force the matter into binding arbitration.

Mr. Palmer said his friends at Infosys now shun him. "You start to feel like you are the one who has done everything wrong," he said. He continues to receive explicit death threats.

"It is people like you that make us Indians angry," said one he received by e-mail. "Why must you drag us down into poverty. You fat lazy greedy American."

But Mr. Palmer said: "My only worry is that Infosys will be slapped on the wrist and will continue to thwart our laws. As much as I need my life back, I will not let this happen."



Jack B Palmer

A report, article, question, comment, tactics and poem

Blowing boldly

First international survey online

Cynthia Kardell reports

The world's first multi-language, online whistleblowing survey is open — and everyone is invited to participate.

The 20 minute survey is at <https://whistleblowingsurvey.org>

It is part of a joint research project between Melbourne and Griffith Universities. Suelette Dreyfus, Melbourne University, and AJ Brown, Griffith University, head up the research project, which is funded by the Australian Research Council.

The anonymous survey is open to everyone, whistleblower or not!

Independent MP Andrew Wilkie, speaking at the Australian survey launch in June 2012 with Toni Hoffman, committee member of Whistleblowers Australia, said that he would introduce a private member's bill to protect whistleblowing if the Commonwealth Government did not act on the issue. See: <http://www.mydailynews.com.au/story/2012/06/06/wilkie-wants-whistleblower-protection/>

The launch also coincided with legislation introduced into the ACT Parliament the following day that will provide possibly the best protection in Australia for civil servants whistleblowing to the media.

For more information about the survey go to <http://people.eng.unimelb.edu.au/smilton/whistleblowing/> or follow @SueletteD on Twitter.

Up to eight foreign language editions of the survey will be launched over June and July 2012.

Please spread the word, link to the survey and encourage people to participate. The different language versions will allow comparisons of whistleblowing culture across countries.

All submissions are stated to be via an automatically encrypted channel. The online survey also provides some special methods to improve anonymity, including a higher security submission option.

Fifteen to twenty minutes is all it takes. So why not get online and make sure your experience is in the mix?

Cynthia Kardell is president of Whistleblowers Australia.

An article, a question and a comment

Investigator wants whistleblower status

Rae Wilson

Fraser Coast Chronicle, 2 May 2012

A FORMER Queensland Medical Board investigator, who has made allegations about dodgy malpractice in the state's hospitals, wants whistleblower status.

Jo Barber, who now works for Queensland Health's Ethical Standard Unit although claims she has been effectively stood down since speaking out, said she was concerned Crime and Misconduct Commission chair Ross Martin had referred to her as a "potential whistleblower."

Mr Martin has asked recently retired Queensland Court of Appeal Justice Richard Chesterman to conduct a preliminary assessment of the allegations "related to medical matters that may reveal misconduct."

He said, in a statement, that "whistleblowers can sometimes be mistrustful" and he wanted to "help allay" her concerns about the handling of her information and to establish a framework for investigation.

But Ms Barber, who said she had provided a 43-page document, tape recordings and other documents to support her allegations, said she believed not having whistleblower status would hamper any evidence she could give to Mr Chesterman when she spoke outside the CMC building on Wednesday.

"He's a barrister, he can read legislation. If he's saying he's looked at that legislation and doesn't believe I'm a whistleblower, then he's flagging to me that I don't have immunity from committing offences, that I've already

committed them and will commit them if I continue to cooperate," she said.

"The CMC are named in the complaints I made as people who deliberately, or by neglect, failed to provide me information and watched as Queensland Health covered up two major investigations, the Bundaberg Hospital investigation and the Townsville investigation and then rubberstamped it.

"At Bundaberg, there was an allegation there were 37 doctors working there not credentialed over 18 months."

Mr Martin said on Wednesday that whistleblower protection could only be enacted or engaged if it were tested.

"It's not about an official or someone like myself cloaking her with some sort of status," he said.

"The [Public Interest Disclosure] Act isn't structured that way.

"It's not my position to advise her on that. It would be wrong in the same way it would be for police to give free legal advice.

"If there's some sort of test that's how it's engaged, if there's some particular issue that emerges."

[See also the article about Jo Barber on page 3.]

Question from a reader

I am struggling to understand this article. Does it mean that you only find out if you are really a whistleblower if you speak out, are "paid back" and then spend thousands of dollars running a court case to prove that you are a whistleblower and you were being paid back?

Comment from Cynthia Kardell

Most of the acts require a potential whistleblower to make a disclosure in a particular way so as to be able to call on the protection provided by the act.

That is, you are a whistleblower because of what you did but the question is, can you force anyone to afford you some protection? The answer is usually no, because the protection is retrospective in its application. It means that technically your employer is not compelled to afford

you protection unless or until a court finds in your favour.

The way forward is to know that you are a whistleblower (because you blew the whistle), continue to insist that you are a whistleblower who has complied with the act and, then, assume it as a fact, ignore this sort of lawyer-speak, which from a technical standpoint is correct, but is designed to get control over you ... and push on. It's a game of bluff in some ways.

Jo Barber — the subject of the article — should also be looking at the CMC's protective provisions.

Administrative manipulation

Delay Tactics: don't know when, probably in a very very long time, if ever

Delay tactics are attempts to put off into the future something that needs to be addressed; or to continually re-schedule to future dates; or to delay to reach an expiration date or end date.

They are also used with the "we just don't remember anymore" excuse or lie.

Fronts: what's the real reason?

Fronts are when one justification or reason is given, as a front, instead of the real, hidden, motive for the action or event.

Divide and Conquer: division and conflict

Conflicts are often created to cause division so that the different conflicting groups can be more easily manipulated or controlled.

Creating Chaos and Justification: for action and control

Creating chaotic systems is often done to justify taking action or control over the system; or to justify new rules.

Creating chaotic systems is also often a tactic done by organized crime to hide the crimes they commit: without rules and laws there is no crime committed.

Security and Authority: attacks to increase power

Security authorities or organizations will sometimes provoke and welcome attacks on themselves or those they are sworn to protect, and in some cases they may even attack themselves, so that they can obtain more power and authority over those they are said to protect.

Administrative Maze and Complexity: to discourage complaints or to increase the need for a specialist

Sometimes administrations will create complex procedures and forms to discourage grievances or complaints, or to require the help of specialist requiring the payment of fees.

Ambiguities: no answer at all

Answers are sometimes provided or given as an ambiguity. Ambiguities may give the illusion that an answer has been provided but, in most cases, it's not an answer at all.

Extracted from

http://www.psychologicalharassment.com/administrative_manipulation.htm

Recommended by Teresa Kiernan

My husband

Lotte Fog

Lotte Fog blew the whistle on radio-therapy underdosing at Royal Adelaide Hospital. She told her story (under the pseudonym Geraldine Macdonald) in the April 2009 issue of *The Whistle*, where a poem of hers was published. This is the fourth of six poems Lotte wrote during the period of her whistleblowing. She can be contacted at lottesfog@yahoo.co.uk.

Author's note *This poem describes my relationship with my husband from the time I discovered the error to the time of my whistleblowing.*

In my hours of utter loss to contain
the grief
the feeling of having been violated
I floated on my bed
screamed silent screams into my
pillow

gasped for air
my body rocking
caught in contractions of grief

You came and you held me
knew not to speak
just be
you held me as the world slowly came
back into focus
my breaths ragged
my body, thin as paper
my senses, switching from acute to
numb

Then, it was your arms around me
that welcomed me back to the world
convinced me it was worth returning
to

In my days of doubt
when the edge of the world curled
away from me
nauseous from vertigo
when I lost all bearings
did not know myself
sat still and wandered around my
mental space
so utterly lost

you held my hand
your eyes held mine
allowed mine to rest

you showed me north and south
right and wrong
reminded me of what I hadn't lost
but couldn't find

In my years of suffering
when anger blackened my life
fear robbed me of joy
doubt rocked my world

and in the better days
when I was just numb

In the years of joy which was not
In the years of pacing my mental
prison cell
In the years in which I was unable to
give
you never left my side
How can I ever thank you enough?

Whistleblowers Australia contacts

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 by arrangement at 7.00pm on the 2nd and 4th Tuesday nights of each month, Presbyterian Church (Crypt), 7-A Campbell Street, Balmain 2041. Ring beforehand to arrange a meeting.

Contact Cynthia Kardell, phone 02 9484 6895, fax 02 9481 4431, ckardell@iprimus.com.au

Website <http://www.whistleblowers.org.au/>

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 0433 003 012

Tasmania Whistleblowers Tasmania contact, Isla MacGregor, phone 03 6239 1054, opal@intas.net.au

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Thanks to Cynthia Kardell for proofreading.

Speaking out

In the June issue of *Reader's Digest*, there is an excellent article by Simon O'Hagan and Helen Signy, "Speaking out: whistleblowers help make the world a better place. But they can pay a high price for their courage ...", pp. 100–107.

Case studies covered in this article include:

- Karen Smith, a nursing assistant who exposed problems in a Brisbane nursing home
- Kim Holt, a paediatrician who complained about "staff shortages and administrative chaos" at a London hospital
- Toni Hoffman, a nurse at Bundaberg Base Hospital in Queensland who reported concerns about doctor Jayant Patel
- Spider Truman, pseudonym for an Italian "who uses a Facebook page to expose politicians' perks and privileges"
- Jeff Simpson, an accountant who reported problems at the Australian insurance company HIH
- Margrit Sopfi and Esther Wyler, social workers who exposed expense irregularities in Zurich, Switzerland
- Deborah Locke, a police officer who exposed bribery, drug trafficking and other problems in the NSW police
- Florence Hartmann, a French journalist who exposed a secret ruling within the International Criminal Tribunal concerning massacres during the Balkan wars

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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