

*"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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*"He was a whistle-blower, but I was the only one who could hear it."*

### What we want — is a little respect!

Cynthia Kardell



LAST SEPTEMBER the federal report on whistleblower protections in the corporate, public and not-for-profit sectors by the Joint Parliamentary Committee on Corporations and Financial Services made the astonishing finding that “*whistleblower protections remain largely theoretical with little practical effect in either the public or private sectors.*” It’s my emphasis. I couldn’t let it go unnoticed as I think we need to savour that admission, because it has been a long time in coming — nearly 25 years.



The federal whistleblower protection law has only been in place since January 2014. I remember Labor’s Mark Dreyfus MP saying there was no real appetite for it in a hung parliament with more pressing things on hand, and that it was only ever intended to bring the federal jurisdiction into line with the laws already operating across all state and territory jurisdictions, some since 1993. So the question remains,

why the federal report’s admission, why now and what conceivably could come of it in this parliament?

You’ll remember the Coalition only agreed to the inquiry and to set up an expert panel in order to secure senator Nick Xenophon’s support on an unrelated bill.

Maybe the pressure of scandal piling upon scandal in the banking and financial sector left them with no place to go after nearly 25 years of looking the other way as whistleblower after whistleblower was sacrificed so some guilty executive could save face. If so, is that the full extent of it, other than to tinker around the edges some more: to tighten up the grounds on which the protections might apply, by asking the whistleblower to do more? (No surprises there, I hear you mutter!)

Legislation usually follows change and it rarely keeps up, because the more conservative thinkers are concerned to keep their hands firmly on the levers of power. We’ve seen this in the way whistleblower legislation has been developed, because the weight of legislative change has been to hold us increasingly more responsible for failing to get protection. We need to turn that around. We need to remember that legislation has never helped us, but neither has it stopped us — from doing what we do — which is why I think what we do is the more important.

Of course, we need to continue to press our legislators, employers and others to do what *we know* needs doing, even if at times we know that pigs won’t fly! They have a job and we should demand they do it.

The way forward as I see it is to find ways for whistleblowers to do the things that we know work. The things that we think should be enshrined in law now, like being able to go to the media without fear of being prosecuted and to blow the whistle, anonymously or not, through a solicitor, media or other agent. We need to strike out in our own direction knowing that what works for whistleblowers will eventually force the changes in law that we want. Frankly, I can’t see our legislators or our employers willingly ceding power to whistleblowers any time soon. I doubt it’s even in their DNA.

“What does that mean?” I hear you ask. Well, when someone comes knocking on our door for information and support, we should be explaining why slavishly sticking to “the system” as we know it, in the hope of protection somewhere down the line, usually after you’ve lost your job and your family, is a mug’s game. No more keeping quiet lest we invite retribution from our employers. No more having to lie, to keep confidential what should always have been publicly known. No more letting a bullying boss tie you in knots over it. No more hoping for crumbs to fall from the table. We need to adapt what we know after nearly 25 years of trial and error and use “the system” to our advantage, not theirs.

Here’s what I’m thinking.

The first thing is to take a reality check. Don’t be naïve. Acknowledge the obvious. If you’re right about what you’ve uncovered, then the organisation is probably not the organisation you like to think it is. So put aside any romantic ideas about getting an emotional mea culpa from your boss. It is probably not going to happen. Check with Brian Hood, the Reserve Bank of Australia whistleblower. He got the sack, like so many others before him and since.



Brian Hood

Realistically, if they are prepared to scam the system then they have built up a network of likeminded souls, some on the take and some not. So learn your lesson when it matters, not *after it costs you everything*.

So don’t live in hope, don’t delude yourself. Let them do that, because history shows that crooks get cocky, often when they shouldn’t. If we learn to play it right, this might just give us the edge we need.

Work out who has the levers of power, real or personal, and who is in

his or her debt and so on. Because you have only a little power, you need to leverage it to stay out of their reach and keep them in the spotlight. And it can be leveraged, because they're scared! You need to keep them scared. That means depriving them of a target, by staying undercover one way or another and moving on them, when they least expect it.

Keep in mind some of the better known stories as a way of explaining how it might be done. For example, Mark Felt's story.



Mark Felt

He blew the Watergate scandal wide open in 1972 and was only ever known as "Deep Throat" until after his death in 2005. He went to enormous efforts to make sure the journalist didn't know him, just the information he supplied. Then there's Daniel Ellsberg who broke his own cover in 1973 when it was safe, after leaking the Pentagon Papers on America's war in Vietnam in 1969. He avoided prison because of the Nixon administration's illegal attempts to destroy him. (I've just learned a woman, Katherine Graham, the publisher at *The Washington Post*, went out on a limb when her male colleagues said no, way too risky. That's one for the ladies!)

Closer to home: two police officers secretly teamed up with Four Corners journalist Chris Masters, eventually bringing down the government in the "Moonlight State" otherwise known as Queensland in 1987. They only revealed their part in the investigation in another Four Corners program last year.



Chris Masters

Then there are the recent Murray Darling Basin and Crown Casino whistleblowers who remain unknown. They've managed to bring about independent investigations into the alleged crimes and to stay out of trouble. Maybe one day, we'll know them.



In each story the scammers and the crooks were *deprived of a target*, which kept them and not the whistleblower in the spotlight.

Not all stories will get a journalist to come on board, but there are other, more simple ways of staying out of their reach and that are within your control.

You can employ a lawyer to provide a covering letter for a statement which sets out the evidence of wrongdoing, where other evidence can be found, only ever refers to you as "my client" and sets out your rights and their obligations under law. Because it comes from a lawyer, it tends to focus their mind and increase the chances of your allegation being taken seriously. It also sets up a safe system for both parties to interact as the investigation unfolds. You can limit the legal costs by being

careful with what you allow your lawyer to say and do on your behalf.

If you're a member of a union, don't wait until you've got a problem, get your union's rep or legal officer to be the post box and then, when things get scary, they will already have your back.

Either way, make sure you have proof of your prior work performance record as a benchmark.

If you don't mind being known, still think about using a lawyer or union as an agent, even if they just act as a post box, because it will increase your chances of not becoming a target yourself. Make sure you get someone experienced in the relevant areas of law.

Or you might consider leaving, with the goods.

In 2003 Andrew Wilkie MP resigned after removing the documents he'd need to prove the government had lied about Saddam Hussein having weapons of mass destruction. He then told his direct boss what he was doing, handed in his resignation with immediate effect and walked down the hill from the ONA to an interview with journalist Laurie Oakes. It went to air on the ABC that evening. Yes, Wilkie suffered a bit of name calling, but financially and psychologically he was already beyond their reach.

Ten years later in 2013, US analyst Ed Snowden downloaded classified records of routine surveillance of the US public and left his country for good. He is safely out of their reach in Russia. You might think he paid too big a price, but before he did anything he decided what he wanted to achieve and what that meant if he was to succeed. Tellingly, Snowden took quite a few months to persuade the journalist of his choice to do the job he wanted.

You might think that they are two extreme cases and they are, but it's the strategy that's important here. If you want to keep them and not you in the spotlight, get the documents offsite and organise a new job before you move. And if your employer tries to sue you for theft of documents, hammer them publicly with proof of their threats.

But there are other ways, for example, upfront and in a group. Four allied health professionals in Sydney put together a formal signed document that itemised the allegations and available

evidence, identifying it as a public interest disclosure under the relevant act and setting out the rules of engagement. It was sent by registered post to the hospital CEO and thereafter, they refused to deal with anyone other than as a group as previously advised.

They were successful. They had planned it upfront, knowing that they had to avoid any attempt by their employer to pick them off one by one. Collective action is reliably effective if the group remains intact. They imagined how it might all pan out and were prepared when their employer tried the old divide-and-conquer routine.

So, if we're smart we can help tomorrow's whistleblowers to exercise their rights as *we think they should be able to*, and stay safe. Over time, if we get our way it will become more ordinary for executives and managers to come clean rather than take the chance of the information being splashed across the media somewhere, because *they* won't be able to control whether or when that incriminating evidence is put out there in the public — which is what they do now, to our great detriment.

The key here is to remember not to be too worried about not complying with the system, under threat of losing protection, because after all, as it stands there is nothing to lose!

Aretha Franklin, civil rights campaigner and blues singer from the 1960s, interrupted my thoughts as I wrapped this article up. She was belting out her signature tune on the radio and I couldn't stop myself joining in ... *What we want ... is a little respect, heh ... respect*. You know, that's what's we need. Respect for what we do and respect for the choices we make.

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Cynthia Kardell is president of Whistleblowers Australia.

## How the tides change

Lynn Simpson

FOR THOSE UNFAMILIAR with my initiation into the whistleblower world, I have prepared a summary of major pertinent actions ... to date.

From 2001 I was a shipboard veterinarian accompanying livestock on voyages all over the world with the merchant navy. Life as a vet can be challenging enough. Add the concurrent role of being an international seafarer and you enter a world many cannot comprehend.



As such, in 2012, when I was offered the opportunity to be the technical advisor to a government group unfamiliar with my daily work, I leapt at the chance. Utilising my unique experience to help initiate improved animal welfare standards was a dream job come true.

Too good to be true as it turns out.

I was offered the opportunity to contribute a submission to the government appointed steering committee. Instead of the usual couple of pages of written text, I chose to provide 44 pages of cut and pasted poorly developed/regulated legislation and images from voyages of animals in transit to put this legislation into context.

Within three months of submitting this confidential document, the Australian Department of Agriculture, Fisheries and Forestry (DAFF) “inadvertently” published it on the internet complete with my name.

The public deserved to know what was truly happening with our livestock at sea. However, it is a small industry and I was soon blacklisted. This was why my submission needed to have been confidential.

My career was decimated as so commonly happens with this recipe.

Five plus years later, there was still no contact from my old colleagues regarding employment opportunities. This does not come as a surprise my trade is contentious and fears publicity of their poor practice. What was a surprise was that DAFF had continued to host my submission on its web page for around six months after it was clearly proving problematic to them, the industry and of course myself. “First dog on the moon” captured this beautifully in a cartoon (see page 6).

During this six-month period, the whistleblower recipe continued to be prepared. I was gradually dismissed from meaningful work, and contact with colleagues evaporated. I became all but invisible in people's company. Meetings about me were held ... I wasn't invited. I was relocated to a separate building to work in an unfulfilling job with my friend the office pot plant.

I soon psychologically broke and went home — a nervous breakdown.

Life was not as I knew it and would never be the same again.

In February 2017, 38 lawyers later and having sold most of my possessions that didn't breathe, and after much governmental obfuscation, harassment, bullying and repeated interference with my home computer and IT anomalies, I finally got my case to the Federal Court in Canberra. I filed on the basis of negligence, breach of contract and damages. After two mediation sessions we finally “settled out of court” (a stupid saying as we were in a court house).

An agreed statement was part of the settlement:

Dr Simpson's legal proceeding against the Commonwealth arising from the inadvertent publication of her submission to the Australian Standards for the Export of Livestock (ASEL) Review steering Committee has settled on confidential terms.

The parties are pleased the matter has resolved. The Commonwealth wishes Dr Simpson well.

I refused to be gagged and the only confidentiality that exists is the legal minimum as per any case. During the years of playing a cat-and-mouse game of being ignored by the government

whilst trying to progress my legal case I grew increasingly frustrated ... and broke.



Against the advice of many lawyers I spoke to, I went to the media. ABC's *7.30 Report* did a comprehensive piece on me in mid 2016. This was a dizzying event as I wasn't the limelight type.

Little did I know it was to change my life further. Interview offers came in thick and fast as of that evening. Radio, magazines, newspapers and individuals.

Soon I was doing it all. Wisely advised by Whistleblowers Australia, I kept the light on me, the pressure on the issue, and refused to disappear into oblivion. Although the brochures looked tempting.

In the six months preceding settlement I managed to get a fresh piece in the media each week.

This was a complete eye opener. Several well known publications printed articles about me but interestingly it was a little known Maritime publication that would prove to be my solid rock.

*Splash* 24/7. I had never heard of them. They contacted me the day after the *7.30 Report* story aired on TV.

*Splash*: "Could you write a 500–600 word piece on your opinion of live export?"

Lynn: "No, I replied. I could never express my opinion in so few words."

*Splash*: "OK, would you be interested in doing a series?"

Lynn: "Hell yeah!"

So began a new chapter in my life. I started writing pieces for *Splash* and they hit the shipping world hard, and this proved to be the antidepressant I so desperately needed. Within two weeks I was getting feedback from the International Maritime Organization

(IMO), the UN's shipping arm. They were appalled.



Feedback from the articles, even of the negative type, kept feeding more article ideas and hence more articles.

I had seen myself as simply a vet. Now I was being asked to expand on topics such as:

- Animal cruelty
- Animal welfare
- Seafarer welfare
- Public health: anti microbial resistance (AMR) from misuse of drugs in food producing animals
- Sexual harassment
- Mental health
- Environmental issues
- Regulatory capture
- Ship design.

And to top things off I have been contacted by the world's largest publishing house for my memoirs from birth till now. A type of cathartic torture.

The day before I settled in court in Australia, I found out that my submission, that was now a global document, had been used in a Supreme Court case in Israel.

A petition to ban live exports to Israel was based on my submission.

No pressure ... not!

Soon after being free of the federal court I found myself in Israel defending my credibility on the back of this case. I was soon presenting on Israeli TV and then whisked off to the Knesset (Israel's Parliament) in Jerusalem to present to Members of the Knesset on live export and its affiliated risks to animals and consumers.

I returned from Brazil several weeks ago after presenting to a legislative assembly-type group to launch a new Ban Live Export campaign there and enhance Brazil's awareness of the issues at hand with this trade.

Offers from overseas countries are growing, more launching of campaigns, more lecturing on awareness to

anyone from activists, vet students, vet professors, primary producers and interestingly I'm now being asked to speak to legal students studying animal welfare law. I'm soon to find a scarf, pack a bag and head to Harvard University to lecture to their students.

My emails are constantly filled with people wanting information on animal transport and asking for help in this field. No paid work to date, but the gain I get in self esteem and pride is probably worth more than cash. It's just a shame I can't exchange any of it for groceries.

It sounds like a fairy tale. And I must admit I often shake my head as to how things have worked out. It's by no means an easy trip. I have PTSD, depression and anxiety as a result of the government's betrayal and my understanding of how common this is. I struggle with my mental health every day, but with every positive impact from telling my story or exposing more evidence to try to keep the bastards honest, I feel a little better.

To anyone in a similar situation, just hang in there and take deep breaths.



Lynn Simpson is a member of Whistleblowers Australia's national committee.



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## WBA conference

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WBA's annual conference and AGM were held at the Uniting Church Convention Centre, North Parramatta, Sydney on 18–19 November 2017. WBA President Cynthia Kardell introduced each of the speakers; her remarks are reproduced here. For the other speakers, you can read notes on the spoken presentations or edited versions of their documents.

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### Conference

#### Saturday 18 November

- 9:00 Welcome: Cynthia Kardell
- 9:15 Julia Angrisano, National Secretary, Finance Sector Union
- 9:55 Richard Gates, Public advocacy in a small community
- 10:35 Morning tea
- 11:05 Robert Tierney, Pathway to survival
- 11:45 David Carruthers, Community leader stands up to property developers and political sponsors
- 12:25 Lunch
- 1:45 Kim Kirsner, Never but never be a bystander
- 2:25 Margaret Banas, Good policy gone terribly wrong
- 3:05 Afternoon tea
- 3:35 Larry Vincent, Prosper doing what you ought
- 4:05 Donald Parkes, Doctored! A university story
- 4:45 A conversation with Cynthia Kardell

### AGM and talks

#### Sunday 19 November

- 9:00 Annual General Meeting
  - 10:35 Morning tea
  - 11:05 AGM, continued
  - 12:25 Lunch
  - 1:45 Jeannie Berger, Woollies' worst nightmare
  - 2:25 Lynn Simpson, An update [see report on pages 4–6]
  - 3:05 Afternoon tea
  - 3:35 Raffles, jam and wine
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## Banking and whistleblowing

Julia Angrisano

### Cynthia's introduction

Julia Angrisano was appointed National Secretary of the Finance Sector Union (FSU) in 2016 after spending more than 17 years working in the finance sector to improve working conditions in the sector. One of the highlights of Julia's career is the recent decision by the Commonwealth Bank to back pay unpaid superannuation to part time workers who worked additional hours over the last decade. Julia's vision is for a more equitable finance industry, that no longer has an enormous gender pay gap and that provides women workers with retirement savings that are more reflective of those of their male colleagues. Julia holds a Bachelor of Arts (Political Economy) from the University of Sydney and is involved in the Australian Council of Trade Unions' mentoring program.



Julia Angrisano

### Julia's talk

As a trade unionist representing workers across the finance industry, I have seen first hand the inadequacies of a system that fails workers who speak up and speak out against unethical behaviours or misconduct in their workplaces. And today I want to share with you our experiences and thoughts on how the system can be strengthened so that whistleblowers have the protections they need.

I represent bank workers and they tell us that they are pressured not to rock the boat by calling out unethical or unlawful behaviour. While all employers have whistleblower policies in place workers are afraid to access the policies because of pressure from management.

Members have reported instances:

1. where they have been warned by managers not to report unethical behaviour
2. when they have been directed to undertake unethical actions
3. of being subjected to onerous procedures after speaking out about unlawful activity.

The internal systems and policies within the finance industry are not sufficient to encourage an employee to come forward as a whistleblower.

Reading bank policies is like poetry. The gap between the rhetoric and reality of these policies is significant.

It is not a coincidence that the number of scandals involving poor advice and customer exploitation has increased as remuneration and management systems designed to exploit customer interaction have become more prevalent, seemingly following the guideline to "seek to exploit every customer interaction as a sales opportunity."

Public trust and confidence in the Australian finance sector are essential to the efficient running of the economy. Strong whistleblower laws are essential to rebuilding trust and confidence after a long series of crises and scandals in the sector.

Let me tell you a short story about a manager in the National Australia Bank (NAB).



### A manager tells her story

I worked at National Australia Bank Financial Planning Division. My role was to manage four teams (20 staff) of financial planners across NSW. This

was my first role that required me to manage people; I faced many challenges as I got to know the people that reported to me as well as the other managers, and notwithstanding some difficulties I worked hard to develop good relationships with both my colleagues and my direct reports.

I and the planners who reported to me understood that there were high expectations regarding the amount of business that we were to generate. We also understood that our ongoing employment would be determined by our results.

The first time that I noted that normal bank processes were not being followed in my area related to the review of client files. As the manager of the four teams it was my role to review client files to ensure compliance with bank policies. The process of selecting the files was meant to involve me selecting the files for review.

As I began the process of identifying the files for review, the Senior Financial Planner informed me that he would be selecting the files that I would be reviewing. Whilst I didn't agree with his decision, I decided not to rock the boat as he was an experienced and respected financial planner.

Over the next 6 to 8 months, as I became more experienced, I was able to select a number of files for review. Whilst reviewing these files I found a number of discrepancies and major compliance issues.

I raised these issues immediately with my people leader and also the Head of Risk.

Based on my report further file reviews occurred (I was involved in these reviews) with the intention of determining whether there was a systemic problem.

During these reviews I noticed a document (which had been signed by me) had been photocopied numerous times and used in separate client interactions. This gave me cause for concern because I had not signed each of these forms in relation to the separate client outcomes; rather the form had been photocopied (with my signature) and used multiple times without my knowledge.

I informed my people leader, senior legal counsel and senior human resource officer that I found these signed documents.

At this time I was also being contacted by customers complaining about their financial planner and in some cases these customers had suffered a financial loss.

I soon received a call from a very senior manager and he asked me to

jump in a taxi and head to North Sydney. He was waiting for me at the front of the building. He said we were not going inside. We walked round the block and the manager said to me, "If you know what's good for you you'll drop this, make it go away."

I jumped back in the cab feeling really rattled by that conversation, understanding that if I didn't sweep it under the carpet that my career was in jeopardy if I continued to pursue the matter of the planner's conduct.

I went back to my desk and the customers who had started to phone who were now under enormous financial stress — some were going to lose their homes and it was for them that I had to act.



During the investigation I discovered that the form with my signature (that had been photocopied and used multiple times) was a blank form that I had signed for a planner. I realised then that I had made a mistake and that I should never have signed a blank form for a planner.

In my discussions with the bank I acknowledged my mistake and accepted the reprimand that was issued by the bank in relation to my actions.

Despite the bank having examples of a planner using the form on multiple occasions and receiving feedback from customers regarding the planner's behaviour the bank took no action against that planner.

That meant that the outcome of the investigation was to issue me with a reprimand for self-reporting a mistake and to ignore the actions of the planner who used the form on multiple occasions in transactions with clients.

I found this outcome to be in breach of the bank's policies and its fiduciary obligations to customers and I stated this position to the bank.

Despite continuing to raise the issue with senior management and the bank's legal counsel, the planner's behaviour was neither investigated nor sanctioned. In fact he was paid money to leave the bank.

My experience demonstrated to me that an institution can have all of the right policies in place but if the people in charge are not willing to listen and act on information received then those

policies are meaningless.

[End of the manager's story]

### **So how do we ensure that we have a better system?**

In April 2016, in an attempt to avoid the scrutiny of a Royal Commission into banks, the Australian Bankers Association set up a program of reform. Part of that reform package looked at whistleblower policies and developed a set of guiding principles that each bank needed to use to update their whistleblower policies and procedures. It was focused on reaffirming support for employees who blew the whistle on inappropriate conduct.

However, we are of the view that the guidelines and therefore bank policy didn't go far enough. They were more about the process of blowing the whistle — and not enough about the protection of whistleblowers.

Our members tell us that a big issue for them is that there isn't enough protection for whistleblowers in terms knowing what happens after they blow the whistle. They feel like they have a target on their back just waiting for some retribution.



FSU continues to hold reservations regarding the effectiveness of these policies in practice with our experiences continuing to see that cultural alignment is required for these policies to be effective and to encourage workers to speak up and speak out where practices are considered cultural norms but in fact jar with workers' ethics and values.

Put another way: when you are fundamentally rotten, when your culture is bad — profit first, customer and everything else second — a new policy won't fix it. It just sets up the whistleblower for failure because they walk into a process that can never protect them. They walk into a trap and in some cases they are sacked.

## Parliamentary committee

In order to continue our advocacy we used the recent Parliamentary Joint Committee on Corporations and Financial Services established to review whistleblower protections where we focused on these points:

*1. The types of wrongdoing to which a comprehensive whistleblower protection regime for the corporate, public and not-for-profit sectors should apply.*

The FSU believes that the laws governing whistleblowing within the finance sector should cover not just activity that covers breaches of Australian law or a code of practice but also behaviours and work systems too (as many of these behaviours encouraged in our industry are encourage and reward behaviours that are not in the customer's best interest). These behaviours would be considered unethical but do not currently breach Australian laws.

*2. In terms of compensation arrangements in whistleblower legislation across different jurisdictions — we are in favour.*

There should be compensation available for employees who use whistleblower protection to expose unethical behaviours and/or corporate misconduct and that compensation should be paid by the employer. This would act as a significant trigger to improve corporate compliance with their own well written but poorly implemented whistleblower policies.

When determining the appropriate amount of compensation:

- Where an employee loses their employment, the compensation should at least equate to the employee's annual salary.
- Where the employee can demonstrate a financial disadvantage as a result of acting as a whistleblower, the compensation should at least reimburse the employee's loss.
- The calculation of loss should include future potential earnings.

The compensation scheme should be independently administered and claims should be able to be made and

processed without resorting to legalistic procedures.

Banks and other corporations can and should do better in the treatment of whistleblowers and compensation should be a last resort. If we make it culturally safe to blow the whistle then we won't need to compensate workers but until we reach that point we need some compensation. In our industry we know of two very high profile whistleblowers who lost their jobs.

Jeff Morris exposed misconduct within the Commonwealth Bank's financial planning division. I read his submission to this inquiry and it made me very sad and but also angry. The impact on his life was tremendous. He came home one day to find that his wife had packed up the house and taken the kids because it was too much for her. The bank took everything from him including his family.



Jeff Morris

Since going public in June 2013, Jeff Morris says he is contacted at least once a month by company insiders asking for advice about reporting corporate misconduct.

"When I explain the potential cost to them: the loss of not just their job but also their career, due to vindictive back channel smear campaigns; the lack of any effective protection or compensation, let alone rewards, most walk away," he says. "Many will say they can't justify doing that to their family."

Corporate Australia is littered with whistleblowers who take on enormous risk for no personal gain, in fact to their great detriment.

Dr Koh, the Chief Medical Officer of Comminsure, blew the whistle on outdated definitions of a heart attack.



He was terminated by the Commonwealth Bank. They said the reason was not because he spoke out about the systems/process and behaviours all designed to avoid paying legitimate claims but because he sent bank documents to his personal email — the very same documents he needed to blow the whistle.

*3. We need to ensure effective access to justice — including legal service for any person who has made a disclosure and requires protection as a whistleblower. A person accessing whistleblower protection should be entitled to free legal advice and support.*

We need independent regulatory and law enforcement agencies to ensure the proper protection of whistleblowers. We support the idea of establishing a Public Interest Disclosure Agency (PIDA) agency as an independent body to receive disclosures, provide advice to whistleblowers and a clearinghouse for initial investigations.

Why? The FSU is concerned that current whistleblower management systems are too reliant upon the whistleblower to report adverse activities by their employer.

Given that adverse actions against a whistleblower can be subtle, the union believes that once an employee accesses whistleblower protections the relevant agency should be proactive in ensuring that the individual is not disadvantaged, and where the agency is an internal one that they should be held accountable where the individual is disadvantaged.

I said adverse actions can be subtle, but not always. Right now we are supporting a bank worker. He contacted the speak-out line about breaches of policy and a risk which would expose the bank. As a result, his local management isolated him. They moved him out of his team, placed him in a new team on another floor — in fact he had no access to technology for weeks — and then put him on special

leave while they engaged an investigator to look into the things he claimed. We asked for the terms of reference for the investigation but we never got them. But it was simply them fishing, trying to find something on him. He was on leave for months with no outcomes to the investigation. He was then sent for an independent medical assessment. We didn't see the brief note but we saw the medical report and it was loaded with bias. I don't know where this will end up but there is a high chance that his employment with the bank will come to an end.

The union supports an independent statutory body approach because we do not have confidence in the existing internal whistleblowing regimes in the finance industry. We believe the ability for employees (both current and former) to lodge their disclosures with an independent and external party will encourage more employees to report unlawful and unethical behaviours.



### Conclusion

The work we have done this year has really exposed that the forces opposing whistleblowers are systematic.

What we have seen in banking over the past few years is a series of worrying scandals that have harmed customers, employees and the standing of banks in the community.

We rely on whistleblowers to expose unethical behaviour and corporate misconduct when it occurs within the financial services industry.

2017 has offered a glimmer of hope for potential whistleblowers that things might finally be starting to change. We need a new set of laws and these are being considered by the Parliament.

Australia's whistleblower protections were an embarrassment within the G20 forum and out of step with the standards the community should expect. Let's fix that in 2018!

### Questions from the audience

*Lynn* Are smaller banks better?

*Julia* Perhaps generally, but a lot depends on the particular bank manager. Inside banks, there should be advocates on behalf of whistleblowers.

*Feliks* What about executive pay at the Commonwealth Bank? Why shouldn't information about problems be put to shareholders?

*Julia* A question was posed at the AGM: does executive pay send a signal to the rest of the organisation? However, a new culture was not able to be brought in. Managers retire and receive bonuses despite scandals in the bank. The bank has put a lot of money into public relations to prevent action at shareholder meetings.

*Ray* A news article exposed the false claim that 80% of profits go to customers.

*Julia* The article was published in *The New Daily*, supported by unions.

*Question* Xenophon?

*Julia* After Nick Xenophon leaves federal parliament, the union will continue links with the Xenophon team.

*Question* Contractors?

*Julia* Precarious work is something the union is looking at. The trade union movement has been under attack for years. This is hurting working people and actually hurting the economy, even according to conservative international financial bodies. The union can't do much on its own.

## Public advocacy in a small community

Dr Richard Gates

### Cynthia's introduction

Richard Gates is a neuroscientist with a background in neuropsychology and clinical practice and wide research interests from sleep disorders to human resource management. Before his

retirement to the North Coast of NSW, where he spent his childhood, he was Director of the MBA and professional practice development programs at the University of New England.

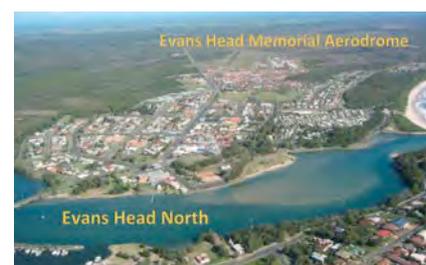
Richard has always been interested in public advocacy, what can be done to confront the problems facing society and the consequences of being an advocate.

In this talk today Richard speaks out about some of the problems confronting the small coastal community in which lives, steps the community has taken to manage these problems sometimes at great personal cost including defamation and sometimes with success, and the wider implications of what seemed to be simple matters at the beginning.

### Richard's talk

Richard told of his experiences as a citizen activist in a small community countering the unscrupulous activities of developers who illegally cleared land and in various other ways harmed the environment in their quest for profit at the expense of the public interest. Richard was one of a number of locals who challenged these nefarious activities. They found that government regulators were weak and ineffectual, thus seeming to be on the side of the developers. On the other hand, creative stunts, connections with local media and efforts at community building were far more effective. Despite some wins, the struggle is unending, as developers keep trying illegitimate means to get their way.

A full account of Richard's talk is not provided here. Instead, to give a sense of the locale and issues, some of his slide images are reproduced. This is followed by text, taken from two of Richard's slides, that summarises his insights from years of experience in campaigning.



Part of the area Richard talked about



Photos showing illegal clearing



Effluent from a sewerage treatment plant was for years discharged into a national park



Dead birds killed by effluent



Protest against effluent pollution



Collecting an orange. Citizens studied local near-shore sea currents by releasing tagged oranges. When collected, these revealed the likely trajectory of effluent.



Protest against ocean outfalls

### So, what have we learned?

The environment in which we live is ever-changing and it is often hard to keep up to date, particularly with all the legislative changes which are going on in the background of which we are not aware. As Alvin Toffler said in his 1970 book *Future Shock*, many of us will be overwhelmed. Expect the unexpected. Sometimes it's good!

**Message 1** Build a network of people and sources, including technical folk, who can help you to keep on top. Remember they are not perfect and have their own lives.

**Message 2** Pay attention to detail, and persevere. Keep good records, including pictures and notes about meetings, press clippings, recordings, etc.

**Message 3** All three levels of government may not be acting in the public interest and may be captured by a particular interest group or discredited economic philosophy. The Senior Executive Service is often politicised in its decision-making. You cannot assume that government or business are the seat of all wisdom and knowledge.

**Message 4** You can't go past self-interest: follow the money.

**Message 5** Use the media and set up your own websites.

**Message 6** While there are some pretty awful people about in high places, there are also some good folks who are only too happy to help anonymously. Good people who are pissed off will "leak."

**Message 7** Courtesy costs nothing. "Thank you" works well with most people.

**Message 8** Follow the 24-hour rule — wait a day before you reply — particularly if you are angry. Instead, vent by writing down your feelings. If you lose your temper, apologise in a timely fashion if appropriate. Avoid all ad hominem remarks!

**Message 9** Attend to personal relationships and your own psychological and physical health. Keep close people informed but don't bore the pants off them! Be careful not to beat up on yourself. Because you are human, you are bound to make mistakes and be irrational from time to time.

**Message 10** Show your teeth only occasionally to let them know you mean business. This is the principle of intermittent reinforcement. But remember the indelibility and potency of negative experience. Bad experiences stick!

## Pathway to survival

Robert Tierney

### Cynthia's introduction

Robert trained as an air traffic controller at the University of Tasmania and started work with Air Services Australia in 1991. In 1994 he froze with fear as a *mid air incident* unfolded on his screen, narrowly

avoiding a mid-air collision. Then a number of close family members died and he suffered a breakdown. His boss moved him to the compliance department, where he found some serious system failures and so began his life as a whistleblower, which almost frightened the very life out of him. Nearly twenty years later, he is slowly coming to terms with his fears.

**Rob's talk (an edited extract from his notes)**

I am a 58-year-old highly eccentric former air traffic controller. I worked without incident to the satisfaction of my employer until 29 October 1994 when I dealt with a mid-air incident west of Sydney. This incident started a chain of events leading to a breakdown in June 1995.



I returned to the Melbourne Air Traffic Control (ATC) Centre in March 1996 and was placed in operational support. I began to discover what I felt were numerous dangerous and potentially fatal flaws in the ATC system. In April I rang the Bureau of Air Safety Investigation reporting hotline and reported all the air safety problems as well as ringing Melbourne ATC Centre and advising the team leaders of the worst problems. The more I dug the more safety risks I discovered.

After 15 months of fighting to get my air safety concerns fixed, I resigned from Air Services Australia on 12 June 1997. Three days later I was offered quite a bit more than \$100,000 by Civil Air, the ATC union, which was in effect hush money. Acceptance would have meant a 12-month psychiatrist's medical certificate deeming me "mentally unwell" so Air Services Australia could say "See we told you his Air Safety Report was the ranting of a lunatic." I thought about the offer for five minutes, declined and have never been near the ATC Centre since.

The fight continued for some years afterwards with some air traffic controllers ringing me at home with their air safety concerns saying, "You take it to the Minister as you have lost everything anyway" or words to that effect.

I became an alcoholic while trying to cope with the stress of the mid air incident, the ATC job itself and subsequent whistleblowing. I have been sober for more than 20 years now but suffer from PTSD (post traumatic stress disorder) and moderate to severe chronic fatigue syndrome.

My desired outcome from all this has always been an official investigation into the whole business of air traffic control with the aim of improving it resulting in greater safety for everyone who flies. Any investigation would need to be conducted by a non-Australian organisation with impeccable credibility and competence and without any political interference from Canberra. Hell will freeze over before this ever happens!

My story is ancient history but for me it was yesterday. Every time I have tried to pull my story together I have had a PTSD relapse requiring a month in hospital, with seven hospitalisations in 20 years.

Whistleblowers sometimes commit suicide. I know two who did.

The video I'm showing you today was composed of segments from other videos about air traffic control, dramatising the tensions of the job and the nature of the job (including what is called a separation breakdown, when aeroplanes are closer to each other than the required distance). My experience was with a separation breakdown during which I froze due to fear. I still have nightmares about it.



Part of my PTSD healing process was doing a sky-dive. Another was facing the media. Today's step is

giving this talk at the WBA conference. After 20 years of mainly silence due to real and imagined fears, speaking and telling my story at this conference is *very* important to me as I move towards resolution.

Facing fear gives me self-respect. The treasure I seek is peace of mind.

**Standing up to property developers and their political sponsors**

David Carruthers

**Cynthia's introduction**

David was a successful entrepreneur with a successful corporate career behind him. Nearly ten years after taking on a billionaire developer in St Kilda and later appearing as a whistleblower in a Victorian parliamentary inquiry, he is slowly picking up the pieces and starting again.

He won the first round, but later, when the Premier's Chief of Staff became the billionaire's private company CEO he realised for the first time, what he had been up against when he spoke out about the Government's decision to hand over 12 Crown land sites to private developers in 2008. The report from an 18 month Ombudsman's investigation into the local Council on the issue of the shopping centre development resulted in almost the entire senior team leaving their positions.

From late 2010, when the State Government changed and Matthew Guy became planning minister, a series of events took place involving 2-3 allegedly corrupt Council planning officers, gangsters and top-end-of-town players in what David believes to be a carefully orchestrated plan to discredit and destroy his public opposition to over-development of St Kilda. Between 2011 and 2013 his physical and mental health were literally destroyed, leading him to consider taking his own life. His 5th hospitalisation in October 2013 was the turning point for him not accepting being a victim and starting on a road to recovery which has been for him, the most incredible journey. This is his story.

### David's story (in brief)

David Carruthers was a successful entrepreneur who represented his business community through being president of his local chamber of commerce. He led a campaign which exposed a \$365m shopping centre development taking place on a Crown Land beachside location that the community believed to be low scale. He later gave evidence at a Parliamentary Inquiry investigating the Government of the day handing over 12 coastal Crown Land development sites to private developers, the site David had originally protected being the planned precedent. He was later asked by his business community to form and lead a tourism association which David did and in the process, set up a strategy to develop the areas of arts and culture heritage.



His actions seemed to be against a hidden development agenda. David stood up too many times and became the target of an orchestrated campaign to negatively impact his multiple businesses cash flows pushing him into serious ill health and decisions to sell significant property assets, resulting in a stage-managed sale process as carefully orchestrated and executed as Robert Redford's *The Sting*.



In 2013 David was expected to die. He has fought to regain his health and to continue to stand up for others through his involvement in other organisations such as Transparency International and GetUp as well as his membership of Liberty and WBA. He became an accidental whistleblower and as a result, lost \$10–12m of assets,

his reputation was targeted by a professional PR firm, he lost his businesses and therefore income and ability to fight legally and his health took such a bad turn he was hospitalised five times in 12 months and spent six months wanting to take his own life.

Not surprisingly he was diagnosed with PTSD in 2015 and has spent the last 2 to 3 years recovering his life. High profile top-end-of-town developers, corrupt public servants and politicians and gangsters all played a role in this example of ruthless suppression of dissent.

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## Never, but never, be a bystander

Kim Kirsner

### Cynthia's introduction

Kim is currently an Adjunct Professor in the School of Medicine at the University Of Notre Dame (Fremantle). His professional career has spanned three continents with degrees in areas as diverse as commerce, psychology and social science.

His talk today draws on his paper entitled "Never, but never, be a bystander" in which he asks his readers to consider whether the title of this essay, should "be taken as an injunction to always report bullying and other forms of inappropriate behaviour, regardless of the personal cost, or should it be taken literally, as an instruction to avoid being a bystander, and never never report bullying or any other form of inappropriate behaviour?"

We'll find out why and why he proposes "that the Commonwealth create an agency designed specifically to protect whistleblowers and the victims of bullying, and to achieve these objectives by creating a national review body to record and, when necessary, report on bullying and predation incidents, across cases, targets, schools, campuses, universities and states." It is an intriguing read and one I commend to you: a copy is available outside.

### Kim's talk

The issue here is the principle of *procedural fairness*, and the departure from that standard by one or more leading universities under their current

*modus operandi*. It is my contention that when a university abandons *procedural fairness* and "convicts" a staff member on the basis of argument advanced in secret by one party and one party alone to a scientific, historical or ethical dispute, it has transformed that university into a *théâtre de l'absurde*!



THE UNIVERSITY OF  
**WESTERN  
AUSTRALIA**

In 2004 I and my then seven-year old daughter attended a staff meeting in the School of Psychology at the University of Western Australia, the aftermath of which included the only significant incident of bullying that I ever observed in 40 years in the tertiary sector. The Head of School (HOS) advanced down the full length of the staff room, shouting at and threatening a colleague for three or more minutes. The threats were explicit and unambiguous, and included the phrase "One day you will want something from me and then ..."

After a week of reflection, I submitted an appropriate note to the relevant authorities. While my academic life before the incident had proceeded without political colour, my life following the incident has been enriched by extensive bullying, personal abuse, and institutionally-based mobbing, the bane of academic life. Furthermore, and despite my long record of publication and doctoral supervision, the HOS declined to endorse my request for a part-time post-retirement contract for supervision and teaching (a request that was triggered by a bout of pneumonia incurred six months after the bullying report), and an action that should be seen in the context of 40%, 60% and 80% part-time contracts granted to staff before or subsequent to my retirement from full-time teaching.

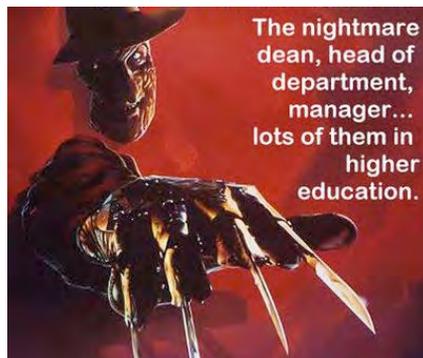


In 2007 the HOS and the university re-wrote history, reversing the temporal order of the alleged events and endorsing the proposition that my bullying report was issued in retaliation for the HOS' refusal to provide financial support for part-time work following retirement. I didn't know about this reinterpretation until 2015. The HOS was subsequently re-classified as a clean-skin, promoted to full professor, and appointed to the position of dean at another university. The bullying saga did not end there however. Following a series of angry displays in his new school, the HOS was placed under administrative review until, finally, he lost control again, and left in a cloud, without a contract at any university!

The UWA regulations include explicit encouragement to report bullying along with the following rider: that the university retains "responsibility for pursuing the matter with the respondent, *and there is no obligation to inform the complainant of the course of management.*" Secret and one-sided court proceedings "lit" the byways to the darkest corners of European history. I raised the procedural issue with the then Chief Scientist of Western Australia and, subsequently, the Standing Committee on Public Administration of the Legislative Council of WA, and, in effect, they endorsed the apparent lack of *procedural fairness*. The principles of natural justice outlined by the Commonwealth Human Rights Commission are clearly of no interest to these parties. Staff no longer enjoy either "the right to be heard" or "the opportunity to put (their) case forward."

The "evolution" of natural justice merits passing comment, and the witch-hunts of the 1640s provide an appropriate benchmark. Between 1645 and 1647, hundreds of witches were discovered and drowned, burned or hung in and around Ely in Cambridgeshire by Matthew Hopkins, the famous Witch-Finder General. However, most if not all of the alleged witches were provided with the charges against them and an opportunity to speak to those charges.

I recommend that university staff desist from submitting reports of bullying by managers until a management model is established that: (a) avoids conflict of interest between the university and the alleged manager-perpetrator, and (b) provides an opportunity for the alleged perpetrator to respond to the charges, whatever they are.



### **Jozef's story — good policy gone terribly wrong**

Margaret Banas

#### **Cynthia's introduction**

Margaret is telling her husband's story, because English, their second language, comes more easily to her than him.

Jozef didn't start out being a whistleblower, although he was treated like one when things turned nasty, but the Banas team won out in the long run. Margaret puts it down to the fact they supported each other and to the long nights she spent at the computer examining related legislation and court judgements and later, sharing some of her findings with their lawyers.

Also, that they were lucky that the judge who decided their case was

diligent, thorough, bright, reasonable and fair. Their story is long and complicated (the judgement is about 100 pages long), but the judge understood it well and could link all the facts. (Margaret cannot say this about their first barrister who represented Jozef during the trial.)

Margaret is our public officer.

#### **Margaret's talk (a brief summary)**

Margaret provided a blow-by-blow account of Josef's experiences working as an accountant in the NSW public service. His position was made redundant. He asked for a package but instead was told he would be kept on because his skills were valuable. But positions weren't provided as promised and he was left without work. The rest of the story concerns the ridiculous bureaucratic machinations about redeployment within the NSW public service, compensation, referral for medical assessments and all sorts of other procedures. It ended up costing the NSW government more than \$500,000, including legal costs, when it could have been resolved by about \$20,000 initially (the approximate value of the redundancy package).

### **Prosper doing what you ought**

Larry Vincent

#### **Cynthia's introduction**

Larry describes himself "as a serial whistleblower, who with good friends and family and with the ability to transition careers has enjoyed a good life – no regrets. He has a Bachelor of Arts, Graduate Certificate in Management, Cert 4 Project Management, Cert 4 Property Management, and an Internal Auditor AS9000, and has worked in the Finance, Education, Transport and Property sectors. He retired from the workforce in 2016 to pursue his interests in Human Rights and Refugees issues. He is currently an active member of several local and international organisations.

Larry explains why he believes we should try to prosper doing what we ought.

## Larry's talk (adapted from his slides)

I identify as a serial whistleblower over the decades. My aim today is to distil the skills and techniques useful over the years for being a whistleblower.

To begin, the foundation is being ethical. We ask ethical questions whenever we think about how we should act. Being ethical is a part of what defines us as human beings.

It's in a person's makeup to feel comfortable being a whistleblower. When people ask, "Why is it you?", answer "It's in my makeup. I do it all the time."

Key factors in whistleblowing: legal, family, friends (discuss it only with some), finances (you need reserves to take on a big issue), education (useful for making career transitions), career.

### Planning for acting ethically

- Legal: define the problem
- Family: assess the impact
- Friends: determine who is in and who is out
- Financial: how much money have you got?
- Educational: can you change jobs easily through retraining?
- Career planning: how you thought about what next?

In any situation, it's important to define the problem. Assess the impact on your family: the stand you take could turn up on the front page of the newspaper, and be all over social media.

Re friends, determine who is in and who is out, namely those who will support you and those who will freak out if you say you're going to blow the whistle. Friends with skills can be very useful.

Re finances, ask "How much money have I got?"

Ask "Can I change jobs easily through retraining?" If not, think again before speaking out. (Larry has worked in finance, education, transport.)

Re career planning, ask "Have I thought about what next?"



### Case study 1: Australian Taxation Office, 1982

Larry found discrepancies in collection of overseas shipping tax. He reported it to his supervisor and then to the commissioner. He was promoted but cut off from action.

- Found discrepancies in the collection of Overseas Shipping Tax / 1982
- Alerted next senior officer
- Told to ignore
- Said I would advise the Commissioner
- Went on holiday for 6 weeks
- Re-located and promoted on return
- Cut off from further action, stayed on to 1985

### Case study 2: Colonial Mutual Life Assurance Society, 1990

Larry was national sales training manager in Melbourne, with a nice job and salary. He raised concerns to senior management about property trust products. He sought advice from friends, solicitors and communications specialists. He then went to *The Financial Review*. The editor offered protection if he was sued. Larry resigned. The company management contemplated taking legal action again but did not. The property trust products were exposed. Larry returned to Sydney, contacted friends, got a job.

- As national sales training manager in Melbourne, I was responsible for financial planning license training 1989–90
- I discovered property trust products manipulation through a wholly owned subsidiary
- Challenged senior management
- Sought advice: legal, communications, friends
- Went to *The Financial Review*; a story was published; I resigned

- The wholly owned subsidiary closed and property trust products were exposed
- Returned to Sydney, contacted friends to obtain a job — contracted to Australian Business



Larry stands next to a sign that wasn't aimed at whistleblowers, but could have been

### Case study 3: Railcorp, 2006

Corruption was rampant. The anti-terrorist slogan "If you see something, say something" is relevant to whistleblowers. Larry met a journalist from the *Sydney Morning Herald* at Central Railway Station. The journalist was worried. Security guards circled them during their time. Larry provided guidance for obtaining a revealing photo.

Larry was recruited on a 3-month renewable contract. The modus operandi was to compromise a new employee, who then would be beholden to the corrupt operators. He was put under the authority of a corrupt figure. He eventually submitted his own internal audit report. He went to his local member, who wrote to the minister, Watkins, who didn't reply. Larry met Linton Besser of the *Sydney Morning Herald*, who was looking for people to speak out. Larry was the only one willing to be named in an article: all the others on contracts were too afraid.

- Recruited on a 3-month renewable contract to manage the deployment of contractors in the Major Projects Division, RailCorp
- Used 6Sigma and identified problem
- Transferred to Major Projects general manager
- Contract terminated ASAP by Major Projects general manager
- Emails to managing director and internal audit with no response
- Submitted my own internal audit report

Larry, after this, became sick, linked to the stress he had been under. He changed career again, to strata management and then to building management. His experience and studies enabled his switch. 18 months ago, he finished paid work and now is engaged in voluntary actions, in human rights and support for asylum seekers, and is still writing letters and attending meetings and asking questions. No regrets.

- No work for 5 months — very ill — changed career
- Six months later, in 2007, I spoke to my local member of parliament and responded to the *Sydney Morning Herald*
- Twelve months later: investigation by the NSW Independent Commission Against Corruption and stories in the *Sydney Morning Herald*
- 2008: managing director resigns
- RailCorp now dismantled after meeting with local member of parliament

#### Post Railcorp

- Successful careers in strata management and building management
- Engaged in voluntary action on human rights, and on refugees and people seeking asylum

#### Now

- Active in writing letters and attending meetings and still asking questions
- Happy that I acted. No regrets!

#### Questions

*David* There's such an amazing amount of corruption in government departments. What can WBA do to push a message out to government or the electorate about what is going on in nearly every government department?

*Larry* I'm in the NSW Council for Civil Liberties, Friends of the ABC, etc. There's always more to be done. A big problem is the reduction in the number of investigative journalists. Schools do what they can. The answer is education.

*Richard* There was a previous report on corruption in NSW Railways that was embargoed by the university.

*Larry* I've never had a really bad comeback due to speaking out. I was respected for being honest. My new

employers knew about my background. If you're going to be engaged, you need to be smart in doing it. Go back to the six factors.

*Roy* What happened to those involved in corrupt dealings?

*Larry* I can live with myself. Can others?

*Richard* I've suffered tampering with my car, and have been put at risk in other ways. When there's a significant criminal element, there's a risk.

*Larry* Do the checklist. When I attend protests concerning refugees, I ensure that my involvement in the NSW Council for Civil Liberties is known.

## Doctored! A university story

Donald Parkes

#### Cynthia's introduction

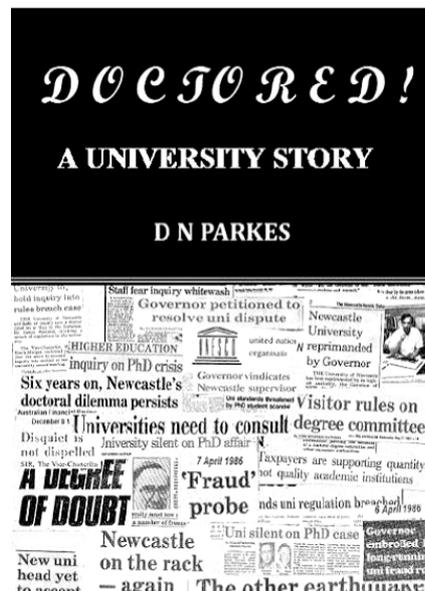
Don came to Australia in 1966, with wife Olga and 15 month old daughter. Olga has been a Member of WBA and a contributor for ever it seems!

Don is a graduate of the University of Durham UK with Honours in Economics and Geography. He has an MA and a PhD from the University of Newcastle NSW and left the University in 1994 ... we shall be hearing why!

He was Director of the Institute of Behavioural Sciences (Newcastle) for 10 years including time in the Medical School as Senior Research Fellow in the Blindness Ecology Research Unit ... we shall be told why if we ask!

Don has held positions at British, US and Japanese Universities and describes his past research and publication interests as being in the area of human ecology, with a special focus on the way time shapes space and human behaviour.

Don published his own story in the form of a book titled *Doctored!* You can buy it here today with the proceeds to go to WBA or read it online at [www.bmartin.cc/dissent/documents/Parkes11.pdf](http://www.bmartin.cc/dissent/documents/Parkes11.pdf)



#### Don's story: Brian's brief summary

Don, working at the University of Newcastle in the 1980s, had the misfortune of being the PhD supervisor of Coral Bayley-Jones. Bayley-Jones had studied at several universities in Britain and Australia and caused upsets wherever she went. She misrepresented her credentials, doctored data, enrolled at more than one institution at the same time for the same work, broke scholarship regulations, and threatened academics. Don wrote a long report opposing Bayley-Jones' thesis being submitted, but his report was ignored. Despite the University of Newcastle doctoral committee unanimously recommending against awarding Bayley-Jones a PhD, the degree was given to her, plus a payment of \$150,000, in a secret deal with Justice Evatt, the Chancellor. Bayley-Jones had serious personal problems, but the university administrators, apparently in the face of threats, didn't do the right thing in awarding her a degree.

#### Woollies' worst nightmare

Jeannie Berger

[Jeannie's talk will appear in the next issue of *The Whistle*.]

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# WBA AGM

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## Whistleblowers Australia Annual General Meeting

19th November 2017  
North Parramatta, Sydney NSW



### 1. Meeting opened at 9.15am

Meeting opened by Cynthia Kardell, President. Minutes taken by Jeannie Berger, Secretary.

### 2. Attendees

Cynthia Kardell, Jeannie Berger, Brian Martin, Feliks Perera, Katrina McLean, Michael Cole, Adam Bode, David Carruthers, Lynn Simpson, Ken Smith, Rhonda Aubert, Rob Tierney, Richard Gates, Adam Hadad, Bob Steele, Karen Burgess, Ross Sullivan, Tim Morrison.

### 3. Apologies

Jane Cole, Margaret Love, Robina Cosser, Stacey Higgins, Toni Hoffman, Geoff Turner, Harry Albani, Lesley Killen, Ken Carroll, Carol Devine, Deborah Locke, Tom Lonsdale, Greg McMahon, David Reid, John Murray, Graham Schorer and Alan Smith.

### 4. Previous Minutes, AGM 2016

Cynthia Kardell referred to copies of the draft minutes, published in the January 2017 edition of *The Whistle*.

Cynthia invited a motion that the minutes be accepted as a true and accurate record of the 2016 AGM.

Proposed: Feliks Perera  
Seconded: Lynn Simpson  
Passed

4(1). Business arising (nil)

### 5. Election of office bearers

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

5(2) Other office bearer positions (Cynthia resumed the chair.)  
The following, being the only nominees, were declared elected.

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

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

Robina Cosser  
Stacey Higgins  
Toni Hoffman  
Katrina McLean  
Lynn Simpson  
Geoff Turner

President Cynthia Kardell thanked all of the committee for its good work. She mentioned how Toni Hoffman continues to field health-related inquiries, many years after the scandal at the Bundaberg Hospital. Stacey Higgins continues to manage our Facebook page. She also still receives inquiries about freedom of information laws. Margaret Love also takes calls from whistleblowers and Robina Cosser is constantly assisting teachers.

### 6. Public Officer

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

6(1) Cynthia Kardell invited a motion that the AGM nominates and authorises Margaret Banas, the public officer, to complete and sign the required submission of Form 12A to Fair Trading on behalf of the organisation, together with the

lodgement fee, as provided by the Treasurer.

Proposed: Richard Gates  
Seconded: Michael Cole  
Passed

### 7. Treasurer's Report: Feliks Perera

7(1) Feliks tabled a financial statement for 12-month period ending 30 June 2017. A motion was put forward to accept the financial statement.

Moved: Feliks Perera  
Seconded: Richard Gates  
Passed

### *Feliks' report*

Once again, it is my pleasure to present to you the accounts for the financial year ending to 30<sup>th</sup> June 2017.

Your Association recorded an excess of expenditure over income of \$2,233.70 for the year, due to a small drop in membership fees, and the increase in the subsidy for the very successful annual conference of 2016. However, the donations from the membership almost doubled and for this I am grateful for the constant generosity of the members.

Currently, the financial status of the Association is very good, and as at 30<sup>th</sup> June 2017, the association had no outstanding creditors. The fixed deposit with the National Australia Bank is steadily growing, in spite of the low rates of interest.

I want to extend my thanks to the members who have so solidly supported the work of Whistleblowers Australia during the past year. Our membership needs to increase, and again I look forward to the members to bring in at least one new member in the coming year.



WBA hasn't yet moved  
into money laundering

**ANNUAL ACCOUNTS TO YEAR  
ENDING 30 JUNE 2017**

<b>INCOME</b>	
DONATIONS	\$2415.00
MEMBERSHIP FEES	\$2310.25
INTEREST ON FIXED DEPOSIT	\$367.27
BANK INTEREST	\$4.03
<b>TOTAL INCOME</b>	<b>\$5096.55</b>
<b>EXPENDITURE</b>	
WHISTLE PRODUCTION	\$3520.86
2016 CONFERENCE SUBSIDY	\$3479.42
RETURN TO BRANCHES	\$250.00
WEB FEES	\$30.00
ANNUAL RETURN FEES	\$44.00
PAYPAL CHARGE	\$5.97
<b>TOTAL EXPENSES</b>	<b>\$7330.25</b>
EXCESS OF EXPENDITURE OVER INCOME	(\$2233.70)
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**BALANCE SHEET, 30 JUNE 2017**

<b>ACCUMULATED FUND</b>	
B/FORWARD FROM 2016	\$21120.32
LESS EXCESS OF EXPENDITURE OVER INCOME	-\$2233.70
SUNDRY ACCRUALS FOR 2017-2018	\$170.00
<b>TOTAL</b>	<b>\$19056.62</b>

<b>ASSETS</b>	
FIXED DEPOSIT WITH NATIONAL BANK	\$13837.97
BALANCE OF CURRENT ACCOUNT	\$4618.65
DEPOSIT FOR 2017 CONFERENCE	\$600.00
<b>TOTAL</b>	<b>\$19056.62</b>



WBA's off-the-books cash reserves

**8. Other Reports**

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

This last year has been interesting. Two federal parliamentary reviews have come together to make what is a truly groundbreaking discovery — that the existing protection laws don't work, so we need a stand-alone whistleblower protection authority! It is refreshing even if it's late, by about 25 years. The process for developing a legislative response was the price for crossbench support in the Senate for another issue altogether. An expert panel was convened in October, including AJ Brown from Griffith University, David Chalkin from the University of Sydney Business School and a number of private sector tax and governance "experts" who to date remain unknown. The committee is charged with establishing protections for people who blow the whistle on tax avoidance and breaches of ASIC and APRA rules. These moves could be the harbinger of real change, but the cynic in me says any outcome is only likely to form the basis of a Coalition election promise next year.

Note, we made submissions to the Victorian and Northern Territory inquiries and both federal reviews. They can be found on the relevant websites.

The TV program *Australian Current Affair* was quick to see it as an opportunity to set up an online whistleblowing system in tandem with a large law firm to "protect" employers' reputations and whistleblowers. Spot the problem, anyone? This is actually a replay of the "accountability" products created for sale by the big accounting firms like Deloitte's back in the early 2000s. They too, wanted our endorsement.

(Hopefully, it will do better than the ill-fated scheme set up by the Western Australia Liberal party which encouraged whistleblowers to use their secure drop box, leaving them open to prosecution under existing public sector laws.)

The Harvey Weinstein allegations opened up a veritable hornet's nest of sexual abuse claims going back decades and not just about Weinstein, pushing the role of whistleblowing bystanders into the limelight like never

before. Bystanders, they shouted should have come forward.



Harvey Weinstein was unable to attend the WBA AGM

The government continues to resist crossbench calls for a federal integrity commission or anti-corruption commission although pressure is building. The Northern Territory government plans to legislate in early 2018, as does the ACT government. Former judge Anthony Whealy QC, who heads up Transparency International, has joined with former justices working with the think tank Australia Institute, saying it's inevitable — that we have to have a federal integrity commission that can investigate political rorts.

We have called on the Northern Territory and Queensland governments to legislate "shield laws" for journalists, consistent with the federal laws authored by former whistleblower Andrew Wilkie MP, which have been replicated in most states. If legislated, it would allow journalists to resist having to identify their sources in the public interest.

We have soldiered on, thanks be to all our committee members who've dealt with inquiries from across the nation. Thanks too, to those who have kept WBA's administrative nuts and bolts from rusting up. And I'm gratified to know we're still considered to be a source for sound and impartial information in the face of building pressure from those "fake news" outlets. It is not unusual for me to pick up the phone to be met with a question, no name given and heartfelt thanks for the information. Often that person eventually rings back with the full story, as if we already had a long, long acquaintance. I have realized it is a trust (in us) that we should treasure and build on.

I've had the privilege of getting to know some wonderful new whistleblowers this year — most of them have remained out of sight and safe from harm. So thanks everyone for your trust in me. I look forward to 2018 in anticipation of a better result for whistleblowers and their supporters everywhere.



One of the whistleblowers  
Cynthia met in 2017

#### 8. (2) **Jeannie Berger**, *Secretary*

Memberships are steady. This year we have 133 members. Cynthia continues to send out *The Whistle* to a larger group of people other than financial members. All up approximately 200 *Whistles* get sent out. Primary goal is to spread the word.



#### 8. (3) **Geoff Turner**, *Communications*

Geoff sent apologies, however he did send his report for the AGM which Jeannie read out:

I'm sorry I won't be at the AGM in 2017, but I have two organisations running events on the same weekend and I've been to all WBA's AGMs in the past few years, so I'll be going to the other one this time.

Several changes were made to WBA's email and web services during the past year. Our email and web host, a computer known as Suburbia, was

changed from a physical PC in a home in Melbourne to a new location as a virtual machine hosted in Sydney. This move took place in early 2017. Most people probably didn't notice at all, but several things changed as a result. As it happens, this means Suburbia has come back to its original home city — it started as a Linux PC in a home in Sydney.

The web server became several times faster than it was before, thanks to its new high-speed connection to the internet and the fast computer on which it is now running.

Some changes were needed in the way in which our outgoing emails were sent. These included the use of a secure connection (TLS — transport layer security).



One helpful side-effect of this is that when I am travelling I can still send out emails for WBA without having to make various changes to settings to use the SMTP server of whatever provider I happen to be using for internet access. Instead, I can just send as usual. Another change was the administrators' use of something called SPF (Sender Policy Framework). This is an anti-spam measure, though it has limited effectiveness. Some new settings were needed in the domain registry.

Some updates to the website will be coming soon.

#### 8. (4) **Brian Martin**, *International Liaison* and editor of *The Whistle*

I keep in touch with other groups such as Whistleblowers UK and various US organisations, but only sporadically. There is no international whistleblower organisation that has done much to facilitate networking between WBA and groups in other countries, so connections with whistleblowers and supporters outside Australia occur only in an ad hoc way.

*The Whistle* continues to be published four times a year. Various people send articles in to be published. Kim Sawyer often writes articles for *The Whistle*. Members and non-members are encouraged to send their story or other articles of interest to me. I am happy to work with you to improve your submission.

#### 8. (5) **Robina Cossar**, *Teacher & Schools contact person*

Robina sent apologies, however we still received her report which was handed out to the members and read.

#### **Reflections on getting our message across**

This year I have been pondering the steady erosion of whistleblowers' channels of communication with the general public and even with our fellow union members.

#### **Union elections**

Some years ago I ran in the Queensland Teachers' Union elections. At that time candidates were given a free half-page advert in the union journal. It was an opportunity to raise worrying issues. After that election there were no more free adverts for candidates in the union journal.



#### **Websites**

In 2004 I began my websites to raise issues of concern to Australian teachers. Somewhere around the end of 2016 people began using mobile phones more than computers, so Google have changed the way they search the internet. Freewebs (my server) was sold late last year and the new owners seem to have had a lot of problems. Now my websites — my huge historical collection of Australian

teachers' experiences and opinions about their working conditions — seem to be steadily fading into invisibility on the internet.



One of Robina's invisible websites

### Submissions to government inquiries

Over the years I have written several submissions to government inquiries. At one time submissions were published very shortly after being received — this meant that reporters could read them and discuss the contents. Now submissions are often released *after* the publication of the related report — so there is less public interest in and discussion of the issues raised in the individual submissions.

On 7 February 2017 I made a submission to the Review of Tax and Corporate Whistleblower Protections in Australia. By 6 October 2017, *eight* months later, my submission had still not been published.

I have discovered recently that the submissions to this review have now been very quietly published. [https://static.treasury.gov.au/uploads/sites/1/2017/10/c2016-t226331-Robina\\_Cosser.pdf](https://static.treasury.gov.au/uploads/sites/1/2017/10/c2016-t226331-Robina_Cosser.pdf)

My submission to this review was also considered and accepted as a "confidential" submission to the Inquiry into Whistleblowers Protections in the Corporate, Public and Not-for-profit sectors. By making my submission "confidential" the committee have ensured that no mention of my submission will appear on their Federal government website.

On 11 October 2017 I made a submission to the Review to Achieve Educational Excellence in Australian Schools. My submission has not been published to date. I have been advised that it will be published "at the end of the review". <https://www.education.gov.au/review->

### [achieve-educational-excellence-australian-schools](#)

Is it really worthwhile participating in these government inquiries? Can we see them bringing about any real change for the better for whistleblowers in Australia? Or are whistleblowers just being exercised, like hamsters running round and round on a treadmill?



In his submission to the Review of Tax and Corporate Whistleblower Protections in Australia, Peter Bennett writes, "This review is simply repeating a failed anticorruption methodology".

I think we have to look at new ways of being heard.

### Petitions

This year one Australian teacher began a petition against workplace bullying. [https://www.change.org/p/petition-against-workplace-bullying-recruiter=54016403&utm\\_campaign=signature\\_receipt&utm\\_medium=email&utm\\_source=share\\_petition](https://www.change.org/p/petition-against-workplace-bullying-recruiter=54016403&utm_campaign=signature_receipt&utm_medium=email&utm_source=share_petition)

It seemed to be effective. Petitions are reasonably easy for one person to organise and they provide an avenue for hundreds of people to tell their own stories. And when you establish a link from a website to the petition, you can see that people are reading and re-reading the petition for months after it has been published.

### Running for Parliament

Also this year, Queensland teacher Rob Wiltshire, the Indooroopilly State High School asbestos whistleblower, is running as an independent for Cooper in the 2017 Queensland state elections: <https://robforcooper.wordpress.com/>

(Alleged whistleblower policeman Rick Flori is also running as an independent for the seat of Southport.)

### Facebook pages

Again this year, a NSW teacher's carer, shocked by the workplace bullying that the teacher had allegedly experienced, has set up a Facebook page to protest the abuse

<https://www.facebook.com/Injured-NSW-Teachers-while-Working-for-DEC-or-DET-459081924160029/>

(And, of course we also have the brilliant Whistleblowers Australia Facebook page

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

### Prompting union members to ask questions

This year I have been prompting readers of my website to question their QTU organisers about workplace bullying issues. I suspect this may be reasonably effective because I notice in a recent teacher's journal that "some members have been raising issues" and members are advised to attend local union meetings and to discuss these issues at the meetings. The problem with this advice is, of course, that it is very difficult to discuss a workplace bullying issue at a local meeting because you run the risk of defaming your school principal and other senior officers. And union meetings are not always female-friendly or even classroom-teacher friendly.

I'd be interested in other ways that WBA members are finding to make their concerns known to fellow workers and the general public.

### 8. (6) Agenda items and motions

(Previously notified)

None put forward.

8. (6i) AGM 2018 in Sydney (Parramatta) on the 18 November.

### 9. AGM closed 11:50AM

### Whistleblower compensation is sorely needed

Matt Fehon  
*Sydney Morning Herald*,  
12 December 2017, p. 23

I WAS A TEENAGER working at Walton's department store when, in 1986, one of Walton's senior managers discovered that the store's new owners, the Bond Corporation, had embarked on a creative method of recognising revenue.

As he had repeatedly reported the matter internally without a response, the manager felt there was no other option but to report the transactions to the company's external auditor.

The following morning he was greeted by this auditor and Alan Bond. And, just like that, this senior manager's 25-year career at Walton's was over.

The auditor had told Bond, one of Australia's most powerful businessman, that this manager had blown the whistle. Eight months later, he left the business. He was 51 years old.



Controversial businessman Alan Bond.  
Photo: Anthony Johnson AWJ

This story stayed with me after I left Waltons and became a policeman. In 1992, while I was investigating a major drug syndicate, a whistleblower came forward providing important details of the syndicate's supplier.

The whistleblower was registered as a confidential informant and in return for his information, he was entitled to a monetary reward.

The cops, not known then for progressive thinking, had nevertheless worked out that for a person to risk their safety or career to help catch a bad guy, something more than the warm, fuzzy feeling of helping expose

corruption was needed.

Fast forward to 2015. Sixteen years into my career as a forensic accountant and I was interviewing a minor player in the centre of large corruption scheme which ultimately led to seven executives being charged and convicted.



Not benefitting from the scheme personally, but aware that the conduct of his executives was wrong, the employee said he had helped cover up their misconduct for fear of losing a job he had held for 12 years.

Asked to co-operate and provide evidence, the employee asked: "what is in it for me?"

The only honest answer I could give was: "nothing."

Decades after the cops twigged that rewards were needed to solve crimes, our corporate crime busters, the federal police and the Australian Securities and Investments Commission, can offer little to entice potential whistleblowers to risk their career to help expose corporate corruption.

Yet think of the benefits of exposing corruption before it causes a major scandal. The impact on a company, its employees and shareholders if this is not done can be significant, causing major damage to reputation, share price and company morale.

The impact can shudder through the economy. Thousands of mum and dad investors or policy holders were adversely impacted by scandals involving Enron, OneTel and HIH.

Whistleblowers represent the innate part of the human spirit where there is value placed on doing the right thing.

Society needs to protect these people who often risk more than they will ever gain by speaking out.

They represent the honest and decent core of our community, often protecting shareholders or the general

public from the fallout if corruption is not exposed before it spreads.

In October, the federal government released the first of what will hopefully be a much wider program of legislative reform aimed at encouraging corporate and tax whistleblowers to speak out.

The draft legislation, which is currently before the Senate, aims to protect whistleblowers who may expose themselves to significant personal and financial risk.

The bill has received mixed reviews with some proponents suggesting the proposed reforms are limited and in some cases unworkable for many companies.

As part of the wider reform program, the federal government is expected to review the recommendations from the parliamentary inquiry into whistleblowers, including the consideration of a reward program and establishing an independent Whistleblower Protection Agency.

I largely agree with this report's recommendations, but I do not subscribe to the "US bounty" style payments for whistleblowers.

I was not surprised that this has not found its way into the draft legislation.

Still, some form of compensation scheme is badly needed. The introduction of a Whistleblower Protection Agency with independent members and the inclusion of judicial experience could help manage this, ensuring appropriate compensation is delivered for the loss of future earnings (rather than a US style cut of any penalty faced by the company).

Strong penalties for those that fail to protect whistleblowers are also necessary to ensure corporate Australia takes notice.

The scheme should be designed to protect the senior manager who blew the whistle at Waltons and to punish those in the company who destroyed his career.

For those wondering what happened to this maligned whistleblower, after leaving Waltons he focussed on raising his seven children. A whistleblower scheme could have seen this man prolong his professional career.

But my father told me that if he had his way again, he'd still have spoken

out. I don't doubt him for a moment.

Matt Fehon is a partner at McGrathNicol.

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## Australia seeks new gag laws that could see journalists and whistleblowers jailed for 20 years

Paul Farrell

*BuzzFeed*, 11 December 2017

**Organisations such as WikiLeaks and disclosures from whistleblowers like Edward Snowden appear to be the target.**



Edward Snowden  
(Brendan Mcdermid / Reuters)

AUSTRALIAN GOVERNMENT and intelligence whistleblowers — and potentially even journalists — may face up to 20 years in jail for disclosing classified information, under the most sweeping changes to the country's secrecy laws since they were introduced.

The Australian prime minister Malcolm Turnbull has announced a broad package of reforms aimed at curbing foreign interference from countries including China and Russia.

The legislation was introduced by Turnbull in the House of Representatives immediately after marriage equality passed on Thursday evening, and the otherwise full House of Representatives was emptied as celebrations were underway.

While the reforms have been flagged for many months, they were only introduced on the last sitting day of parliament this year, and go much further than previously believed.

Unexpectedly, the reforms include sweeping changes to longstanding secrecy laws, which are modelled on

Britain's Official Secrets Act.

The regime raises fresh concerns for prospective whistleblowers, journalists, and also mass leak publication sites such as WikiLeaks. A series of "aggravating" offences will also hamper large-scale leaks like those from former US National Security Agency whistleblower Edward Snowden.

Currently, a single offence under the Crimes Act prohibits disclosures of almost any information by Commonwealth officers. This has been roundly criticised by news organisations and human rights groups, and the Australian Law Reform Commission (ALRC) has recommended changes to curb the scope of information captured by the offence. A further "official secrets" offence also potentially criminalises any disclosure, although the threshold for this offence is high and it has been rarely invoked.

Under the proposed new regime, both offences will be repealed entirely and replaced by several new offences inserted into the Commonwealth Criminal Code. While a seven-year jail sentence is the maximum available under the existing laws, this will be radically increased to up to 20 years for the most serious aggravating in the proposed laws.

The new laws will apply to anyone, not just government officials. They could easily apply to journalists and organisations like WikiLeaks that "communicate" or "deal" with information, instead of just government officials. They will also close a longstanding gap around contractors working on behalf of government agencies, who will also be subject to the new offences.

The bill's explanatory memorandum highlights that it seeks to prevent the publication of almost any information from intelligence agencies, giving the example of salary information of officers.

"Even small amounts of such information could, when taken together with other information, compromise national security, regardless of the apparent sensitivity ... For example, even seemingly innocuous pieces of information, such as the amount of leave available to staff members or their salary, can yield significant counterintelligence dividends to a foreign intelligence service," it said.



The Australian government's image of a whistleblower

It lists an example of a set of circumstances particularly similar to Snowden for the aggravating offence.

1550. An example of this offence is as follows. Person A is employed as an IT systems administrator at a Commonwealth Government intelligence agency. In this role, person A had access a large volume of highly classified information and throughout his employment Person A copied 1000 electronic files from the agency's internal holdings to a personal hard drive. Over 100 of the documents have a security classification, including 20 that also bear one or more code words, and one document classified as TOP SECRET. Person A publishes all 1000 documents on the internet.

Journalists will have a defence available to them if publication of information is considered to be in the public interest and is "in the person's capacity as a journalist engaged in fair and accurate reporting."

However, they bear an evidential burden for proving their conduct satisfies the defence.

No definition of journalist is provided in the bill, and it is unlikely to capture organisations or individuals who play a less traditional role in news gathering, such as WikiLeaks, independent bloggers, or intermediaries who pass information along to journalists but are not the original source.

It places news organisations in the position of potentially having to justify their reporting in court if a prosecution is brought against them.

An aggravated offence will also be introduced that could see a journalist or whistleblower jailed for up to 20 years. Factors for this offence include whether the information is classified as secret, if it is marked with a codeword, or if it involves the dissemination of more than five records with a security classification. That classification could be as low as “protected,” a marking used broadly across hundreds of Australian government agencies.

This offence appears to be squarely targeted at curbing organisations like WikiLeaks that publish large caches of documents. It would also capture whistleblowers like former NSA contractor Edward Snowden. While the laws will not apply retrospectively, they are likely to render any future attempts by news organisations to report on highly classified matters increasingly difficult.



The Australian government's image of a journalist

At first glance the proposed laws do appear to limit the type of information that could lead to a prosecution of a journalist or a source. Several of the offences are focused on protecting “inherently harmful information”.

The explanatory memorandum of the bill mentions the confusion and uncertainty around the application of the existing offences, and cites approvingly the ALRC's review into secrecy laws.

But the proposed regime goes substantially further than the ALRC's recommendations to wind back and simplify the offences.

Conduct defined as “inherently harmful” is extremely expansive; it includes all security-classified information, information that would or could reasonably cause harm to

Australia's interest, and certain information provided to government agencies.

This poses particular problems because of the overclassification of information within Australian government agencies. Agencies such as the Immigration Department routinely classify large amounts of information as “protected” or “confidential,” with no clear basis and limited systems of review.

It could even include, according to the explanatory memorandum, information provided to the Australian Tax Office materials or Australian Securities Investments Commission.

Further offences will also criminalise the communication or dealing with information that “causes harm to Australia's interests,” which won't just include information about law enforcement operations but much broader types of information as well. This includes a broad suite of information about civil and criminal law enforcement that goes far beyond just law enforcement and intelligence agencies.

The explanatory memorandum of the bill acknowledges that this part of the new regime “goes beyond the ALRC's recommendation.”

“The inclusion of the concepts of preventing, detecting, investigating, prosecuting and punishing Commonwealth criminal offences and contraventions of Commonwealth civil penalty provisions is intended to reflect the fact that the effective enforcement of the law and the maintenance of public order require the undertaking of a wide range of activities,” it said.

The definition of harming Australia's interests is so expansive it could include disclosures that lessen the cooperation of law enforcement, cause “intangible damage” to Commonwealth and state relations, or cause a loss of confidence or trust in the federal government.

Whistleblowers who make disclosures to journalists or other individuals may be able to gain protection under the Public Interest Disclosure scheme. However, that scheme strongly favours internal disclosures and places substantial barriers and risks for people who are considering making external disclosures.

While the new regime purports to

replace the offence for Commonwealth officers, it also preserves an almost identical mirror provision. The basis for this offence, according to the explanatory memorandum, is that it will take time to determine whether there is any separate information not covered by the new offences.

This means that the existing broad regime that criminalises disclosures of all criminal information will remain in place, and effectively be enhanced by the proposed offences.

Australia has faced criticism in the past for its hostility towards whistleblowers. The UN's special rapporteur for freedom of expression David Kaye has previously warned that Australians' rights and freedoms are at risk of being “chipped away.”

These secrecy offences have previously been used to target the sources of Australian journalists. Australia's immigration department has referred journalists' stories about the immigration detention regime on a number of occasions for investigation by the Australian Federal Police.

The Australian Federal Police has in turn admitted to accessing journalists' phone and email records without a warrant in order to attempt to track down their sources.

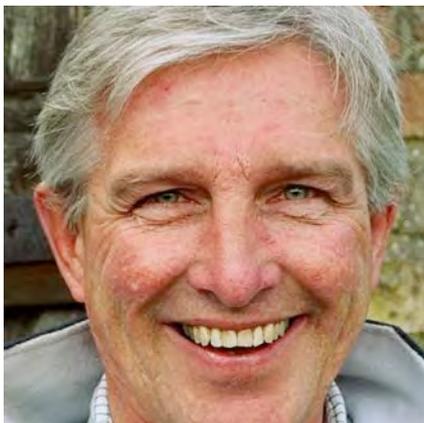
Contact Paul Farrell using the Signal secure messaging app on +61 457 262 172.

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## “Give me 10 minutes”: How a whistleblower escaped Saudi Arabia after uncovering an alleged bribery scheme at Airbus

Camilla Hodgson  
*Business Insider Australia*  
1 November 2017

**Ian Foxley blew the whistle on what he claims was a multi-million-pound bribery scheme at Airbus in Saudi Arabia. After raising the alarm, Foxley ran from an interview with his managing director and fled to a safe house. The Serious Fraud Office has been investigating Foxley's claims of bribery at sub-contractors in Saudi Arabia.**



Ian Foxley

RETIRED ARMY OFFICER Ian Foxley thought he had found his dream job overseeing a £1.96 billion (\$US2.6 billion) contract for upgrading defence telecommunications in Riyadh, Saudi Arabia.

Instead, he uncovered what he believed was evidence of a multi-million-pound bribery scheme, and tried to blow the whistle. Threatened with arrest after he angered a Saudi princess, he decided to flee the country rather than take his chances inside a Saudi jail.

Foxley served in the British Army for 24 years, before moving to telecommunications in the private sector.

In 2010, he found a job advert in the *Sunday Times* for an operations director at defence contractor GPT (now Airbus), and in June of that year touched down in Saudi Arabia to start work on a 10-year project for the Saudi Arabian National Guard. Foxley became the programme director on a project to modernise communications for the Saudi Arabian National Guard. The UK Ministry of Defence won the contract to perform the work and used GPT to fulfil the contract. The National Guard was the end user.

Having worked in the private and public sectors, built two fibre-optic networks, and an intranet, he says, he was confident there was “nothing in this project I didn’t know about.”

But Foxley soon discovered he was the third director in six months — and by December, he too was gone. Not long after he arrived, he says, “things started building in a kind of adversarial way, because things didn’t smell right.”

This is the story of how Foxley uncovered what he claims was a

systemic scheme at Airbus to bribe Saudi officials, which is now being investigated by the Serious Fraud Office (SFO).

An Airbus spokesperson told *Business Insider*, “the UK’s SFO is conducting a formal investigation in connection with aspects of the business of GPT Special Project Management Limited in Saudi Arabia which is a local subsidiary of Airbus conducting business exclusively for the UK MoD. We continue to fully and constructively engage with the SFO but in view of the investigation will not be commenting further.”



#### “Things started getting nasty”

At a meeting with *Business Insider* in central London recently, Foxley was smartly dressed in a navy suit, and carrying a camouflage-pattern umbrella, a nod to his military past.

Not long after starting work in Saudi Arabia, he says he came across a large payment for “bought in services” in the first major GPT project he was required to sign off.

He was told these were outsourced services, but the cost was £1.6 million, more than that of the prime contractor’s fee. Across the total £1.96 billion contract, he says, “bought in services” accounted for 16% of the costs, making them his biggest sub-contractor “by volume of payment.”

This mystery contractor, he remembers thinking, was “not giving me any service. They’re not giving me any product. I’ve never seen them, I’ve never met any of them, I’ve never even heard of them.”

This was his “‘oh shit’ moment,” he says. He started asking questions, and “things started getting nasty.”

Foxley says he now suspects there were sub-contractor fees hidden in every project in GPT contracts going back to 1978. He estimates the contracts’ overall worth since then at around £5 billion: “if you tot up 16% of £5 billion, you should be looking for something in the region of £750

million [in “bought in services” payments],” he says. These unexplained payments, he alleges, were bribes for Saudi officials.

After doing some digging — which included talking to the company’s former financial controller, a man he says he’d been told was “mad” and who had previously tried to blow the whistle — Foxley got hold of documents he says prove a history of bribes totalling millions of pounds, and sent them to a Ministry of Defence (MoD) Brigadier he knew in Riyadh.

Later that day he received a phone call from his managing director, who called him into his office. The head of HR, a Saudi princess, was also there. The director, who knew Foxley had emailed the documents to the MoD, questioned his suspicions, and the discussion grew heated.

According to Foxley, the director then threatened to have him arrested for theft of confidential information.

“I thought to myself, ‘you’re stuffed,’ because if a Saudi princess rings the police here and accuses you of theft, you’ve got no get-out, you’re dead in the water,” he says. So he said, “this conversation isn’t going anywhere,” and walked out.

Foxley describes swiping through secure doors at the military base with his key card, the director shouting at him from behind. When he finally got outside he called the Brigadier, who sent out a military vehicle to collect him.

#### The James Bond-style escape from Saudi Arabia

“This is where things get a bit James Bond-y,” he smiles.

Having collected some essentials from his house — which was “effectively like a luxurious penitentiary” — Foxley bumped into a colleague who’d been sent out as part of a group to look for him. Luckily, he says, the man owed him a favour. “I said, give me 10 minutes. And that was enough time for me to get out of the compound and lose the tail.”

Foxley was taken to a safe house, and an army Colonel drove him to the airport later that night. As they said goodbye at passport control, the Colonel said, “if they have put a stop and hold [on your passport] they will grab you here. I’ll go up onto the platform

and I'll watch. My first call is to the Ambassador, my second is to the Brigadier. Good luck."

Foxley steeled himself, presented his passport, and was let through. He waited until the plane was clear of Riyadh, then ordered a large whiskey and "collapsed."

Back in the UK, he spent a few days writing a report of his findings, which he sent to two "trusted sources" in 2010, with instructions to send it straight to the SFO if anything "happened to him," noting, "I'm not suicidal, by the way."

Foxley's report is currently sitting with the infamously slow SFO, which only began an investigation last year into possible fraud, bribery and corruption at Airbus. No charges have yet been brought, but Foxley expects action to be taken in the next six months, before SFO Director David Green retires in April.

Whether charges are brought, against whom and for what crimes, remains to be seen. According to Foxley, an added complication is that the GPT/Airbus contracts, which are still active, must have been approved by someone senior within the MoD; the original agreement was between the British and Saudi governments, although it was GPT/Airbus that carried out the work.

A MoD spokesperson said, "we understand that the SFO is conducting a criminal investigation into allegations concerning GPT Special Project Management and aspects of the conduct of their business in Saudi Arabia. It would be inappropriate to comment while that is ongoing."

The SFO declined to comment, since the investigation is ongoing.

Foxley is adamant action must be taken, in order to stamp out the notion that engaging in bribery is sometimes simply the "cost of doing business."

"How big do you have to be and how big does the client have to be to get away with it?" he says, "is it burglary or is it business?"

## Sam Adams Associates: a unique club

Annie Machon

*RT News*, 30 September 2017



© Ann Wright / Facebook

SINCE 2002 the unique Sam Adams Award for Integrity in Intelligence has been given annually in either the US or Europe. This year the awards took place in Washington DC, and the prize went to veteran journalist and Pulitzer Prize-winning journalist Seymour Hersh.

Why unique? Well, the group comprising the Sam Adams Associates is made up of former Western intelligence, military and diplomatic professionals, many of whom have spoken out about abuses and crimes committed by their employers. For their pains, most have lost their jobs, and some have also lost their liberty.

Laureates include US army whistleblower Chelsea Manning, NSA whistleblower Edward Snowden, FBI whistleblower Coleen Rowley (*Time* person of the year in 2002 and the first SAA laureate), publisher Julian Assange, UK Ambassador Craig Murray, and coordinator of the US National Intelligence Estimate on Iran in 2007, Dr. Tom Fingar.

The common theme that binds this disparate group together into a rather weird, wonderful and very informal global club is that they have all attempted to shine a light on the dark corners of government, to speak truth to power and expose wrongdoing and "fake news" for the greater good of humanity. It is appalling that they have to pay such a high personal price for doing this, which is why the Sam Adams Associates provides recognition and presents its annual award — a candlestick, the "corner brightener."

The Sam Adams Award has, in recent years, gone to bona fide whistleblowers such as Tom Drake, Bill Binney, Jess Raddack and Chelsea Manning, while publishers, such as

Julian Assange of WikiLeaks fame, have also received recognition. Seymour Hersh is the first mainstream journalist to receive the accolade.

Hersh has a long and illustrious career, beginning with his exposure of the My Lai massacre in the Vietnam war in 1969. It was an article he wrote about the April 2017 chemical attack in Syria that won him the award this year.

To remind people, on 4 April this year a chemical weapon was reportedly used against the civilian population of Idlib Province in Syria and civilians were reportedly killed. Ahead of any possible investigation, the international media unilaterally declared that the Assad regime had attacked its own people; President Trump immediately ordered a retaliatory strike on the Syrian Air Force base from where the alleged attackers launched their fighter jets and was lauded by the military-industrial complex for firm and decisive action.

Except — this was all based on a lie, as Hersh established. However, despite his journalistic reputation, he was unable to publish this story in the American mainstream media, and instead had it published in Germany's *Die Welt*.

The event in Washington this year was a game of two halves — the first was the dinner where Seymour Hersh was presented with his award, lauded by both former intelligence professionals and fellow investigative journalists for his work. It was recognition of the value of true journalism — speaking truth to power and attempting to hold that power to account.



Canadian government blocks Chelsea Manning visit, rejecting her application "on grounds of serious criminality"

The second half of the evening, which Mr. Hersh was unable to attend because of prior commitments, was the more general annual SAA celebration of all things truth-telling and whistleblowing. I had the honor of serving as

emcee of the event, which included a speech from Edward Snowden, Daniel Ellsberg, SAA founder Ray McGovern and many more.

Between us all, we have decades of service and experience across different continents. Despite this geographical spread, common themes continue to emerge as they always do at Sam Adams events: official obfuscation, spy spin, media control, illegal war and more.

What to do? We shall continue to speak out in our work around the world — I just hope that the awareness spreads about the fake news that is daily peddled in the mainstream media and that more people begin to look behind the headlines and search for the truth of what is going on.

Whistleblowers, as well as their enablers in the publishing and media world, remain the regulators of last resort for truth and for justice.



Annie Machon is a former intelligence officer for MI5, the UK Security Service, who, with her ex-partner David Shayler, resigned in the late 1990s to blow the whistle on the spies' incompetence and crimes. Drawing on her varied experiences, she is now a public speaker, writer, media pundit, international tour and event organiser, political campaigner and PR consultant. She has a rare perspective both on the inner workings of governments, intelligence agencies and the media, as well as the wider implications for the need for increased openness and accountability in both public and private sectors.

## Whistleblower protections in USA Liberty Act not enough

David Ruiz  
Electronic Frontier Foundation  
17 October 2017

THE USA LIBERTY ACT fails to safeguard whistleblowers—both as federal employees and contractors—because of a total lack of protection from criminal prosecution. These shortcomings—which exist in other whistleblower protection laws—shine a light on much-needed Espionage Act reform, a law that has been used to stifle anti-war speech and punish political dissent.

Inside the recent House bill, which seeks reauthorization for a massive government surveillance tool, authors have extended whistleblower protections to contract employees, a group that, today, has no such protection.

The Liberty Act attempts to bring parity between intelligence community employees and contract employees by amending Section 1104 of the National Security Act of 1947.

According to the act, employees for the CIA, NSA, Defense Intelligence Agency, Office of the Director of National Intelligence, National Geospatial-Intelligence Agency, and National Reconnaissance Office are protected from certain types of employer retaliation when reporting evidence of “a violation of any federal law, rule, or regulation,” or “mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.” Employees working at agencies the President deems have a “primary function” of conducting foreign intelligence or counterintelligence are also covered by these protections.

Employees can't be fired. Employees can't be demoted. They can't receive lower pay or benefits or be reassigned. And no “personnel actions” whatsoever can be ordered, actually, meaning no promotions or raises.

But employees are only protected from retaliation in the workplace. Entirely missing from Section 1104 of the National Security Act of 1947 are protections from criminal prosecution. That's because the government treats

whistleblowers differently from what they call leakers. According to the federal laws, government employees who make protected disclosures to approved government officials are whistleblowers, and they have protections; employees who deliver confidential information to newspapers are leakers. Leakers do not have protections.



Extending these whistleblower protections to contractors—while positive—is just an extension of the incomplete protections our federal employees currently receive. And, as written, the Liberty Act only protects contract employees from retaliation made by the government agency they contract with, *not* their direct employer. Contract employees work directly for private companies—like Lockheed Martin—that have contracts with the federal government for specific projects. The available data is unclear, but a 2010 investigation by The Washington Post revealed that “1,931 private companies work on programs related to counterterrorism, homeland security and intelligence in about 10,000 locations across the United States.”

The problems continue. Currently, the Liberty Act, and Section 1104, do not specify how whistleblower protection is enforced.

Let's say a contractor with Booz Allen Hamilton—the same contracting agency Edward Snowden briefly worked for when he confirmed widespread government surveillance to *The Guardian* in 2013—believes she has found evidence of an abuse of authority. According to the Liberty Act, she can present that evidence to a select number of individuals, which includes Director of National Intelligence Daniel Coats, Acting Inspector General of the Intelligence Community Wayne Stone, and any of the combined 38 members of the House of Repre-

sentatives Permanent Select Committee on Intelligence and the U.S. Senate Select Committee on Intelligence. And, according to the Liberty Act, she will be protected from agency employer retaliation.

Maybe.

If the NSA still does fire the contractor, the Liberty Act does not explain how the contractor can fight back. There is no mention of appeals. There are no instructions for filing complaints. The bill—and the original National Security Act of 1947—has no bite.

The Liberty Act makes a good show of extending whistleblower protections to a separate—and steadily growing—class of employee. But the protections themselves are lacking. Contractors who offer confidential information to the press—like Reality Winner, who allegedly sent classified information to *The Intercept*—are still vulnerable under a World War I era law called The Espionage Act.



Reality Winner

As we wrote, the Espionage Act has a history mired in xenophobia, with an ever-changing set of justifications for its use. University of Texas School of Law professor Stephen Vladeck lambasted the law in a 2016 opinion piece for *The New York Daily News*:

Among many other shortcomings, the Espionage Act's vague provisions fail to differentiate between classical spying, leaking, and whistleblowing; are hopelessly overbroad in some of the conduct they prohibit (such as reading a newspaper story about leaked classified information); and fail to prohibit a fair amount of conduct that reasonable people might conclude should

be illegal, such as discussing classified information in unclassified settings.

Whistleblower protections, present in the National Security Act of 1947 and extended in the Liberty Act, are weakened by the U.S. government's broad interpretation of the Espionage Act. Though the law was intended to stop spies and potential state sabotage, it has been used to buttress McCarthyism and to sentence a former Presidential candidate to 10 years in prison. Today, it is used to charge individuals who bring confidential information to newspapers and publishing platforms.

Whistleblower protections to the entire intelligence community are lacking. Instead of treating contractors the same, contractors should—together with employees—be treated better.

Improve whistleblower protections. Reform the Espionage Act.



## Governments turn tables by suing public records requesters

Ryan J. Foley

ABC News (US), 17 September 2017

AN OREGON PARENT wanted details about school employees getting paid to stay home. A retired educator sought data about student performance in Louisiana. And college journalists in Kentucky requested documents about the investigations of employees accused of sexual misconduct.

Instead, they got something else: sued by the agencies they had asked for public records.

Government bodies are increasingly turning the tables on citizens who seek public records that might be embarrassing or legally sensitive. Instead of granting or denying their requests, a growing number of school districts, municipalities and state agencies have filed lawsuits against people making

the requests — taxpayers, government watchdogs and journalists who must then pursue the records in court at their own expense.

The lawsuits generally ask judges to rule that the records being sought do not have to be divulged. They name the requesters as defendants but do not seek damage awards. Still, the recent trend has alarmed freedom-of-information advocates, who say it's becoming a new way for governments to hide information, delay disclosure and intimidate critics.

"This practice essentially says to a records requester, 'File a request at your peril,'" said University of Kansas journalism professor Jonathan Peters, who wrote about the issue for the *Columbia Journalism Review* in 2015, before several more cases were filed. "These lawsuits are an absurd practice and noxious to open government."

Government officials who have employed the tactic insist they are acting in good faith. They say it's best to have courts determine whether records should be released when legal obligations are unclear — for instance, when the documents may be shielded by an exemption or privacy laws.

At least two recent cases have succeeded in blocking information while many others have only delayed the release.

State freedom-of-information laws generally allow requesters who believe they are wrongly denied records to file lawsuits seeking to force their release. If they succeed, government agencies can be ordered to pay their legal fees and court costs.

Suing the requesters flips the script: even if agencies are ultimately required to make the records public, they typically will not have to pay the other side's legal bills.

"You can lose even when you win," said Mike Deshotels, an education watchdog who was sued by the Louisiana Department of Education after filing requests for school district enrollment data last year. "I'm stuck with my legal fees just for defending my right to try to get these records."

The lawsuit argued that the data could not be released under state and federal privacy laws and initially asked the court to order Deshotels and another citizen requester to pay the department's legal fees and court costs.

The department released the data months later after a judge ruled it should be made public.



This 2017 illustration by Jack Ohman with *The Sacramento Bee* shows a lawyer confronting a reporter, created to address public records access issues. (Jack Ohman/*The Sacramento Bee* via AP)

Deshotels, a 72-year-old retired teachers' union official who authors the Louisiana Educator blog, had spent \$3,000 fighting the lawsuit by then. He said the data ultimately helped show a widening achievement gap among the state's poorest students, undercutting claims of progress by education reformers.

The lawsuits have been denounced by some courts and policymakers. A New Jersey judge in 2015 said they were the "antithesis" of open-records policies and dismissed a case filed by a township against a person who requested police department surveillance video footage.

In Michigan, the state House voted 108-0 earlier this year in favor of a bill that would make it illegal for agencies to sue public records requesters. The proposal came in response to a county's lawsuit against a local newspaper that had sought the personnel files of two employees running for sheriff. A judge dismissed the lawsuit, saying the county had to approve or deny the request.

The documents, ultimately released days before the election, showed that one of the candidates had been disciplined for carrying on an affair while on-duty in 2011. That candidate lost.

The Michigan bill's sponsor, Republican Representative Klint Kesto, called the tactic "a backdoor channel to delay and put pressure on the requester" that circumvents the state's Freedom of Information Act.

"Government shouldn't file a lawsuit and go on offense. Either approve the request or deny it," he said. "This

shouldn't be happening anywhere in the country."

As his bill remains pending in a state Senate committee, Michigan State University filed a lawsuit May 1 against ESPN after the network requested police reports related to a sexual assault investigation involving football players. That and a number of other cases are currently unfolding.

In April, the Portland, Oregon, school district filed a lawsuit against parent Kim Sordyl, who is seeking records about employees on leave for alleged misconduct after the disclosure that one psychologist had been off for three years. Sordyl said she believes the information will expose costly missteps by district human resources officials and lawyers, and the district attorney has already ordered the records to be released.

"They are going to great lengths to protect themselves and their own mismanagement. This is retaliation," said Sordyl, who has hired an attorney. "Most people would give up."



Kim Sordyl (AP Photo/Don Ryan)

A district spokesman said the lawsuit, which also names a journalist who requested similar information, amounts to an appeal "in an area of public records law that we believe lacks clarity."

"When this information is released prematurely, the district's position is that the employees' right to due process is jeopardized," spokesman Dave Northfield said.

The University of Kentucky pre-

vailed in January when a judge blocked the release of records sought by its student newspaper detailing the investigation of a professor who resigned after being accused of groping students.

The judge agreed with the university that the records would violate the privacy rights of students who were victims even if their names were redacted.

While that ruling is on appeal, Western Kentucky University filed a similar lawsuit against its paper, the *College Heights Herald*, which sought records related to allegations of sexual harassment and assault involving employees. Several other state universities released similar documents to the newspaper, and the state attorney general has ruled that they are public records.

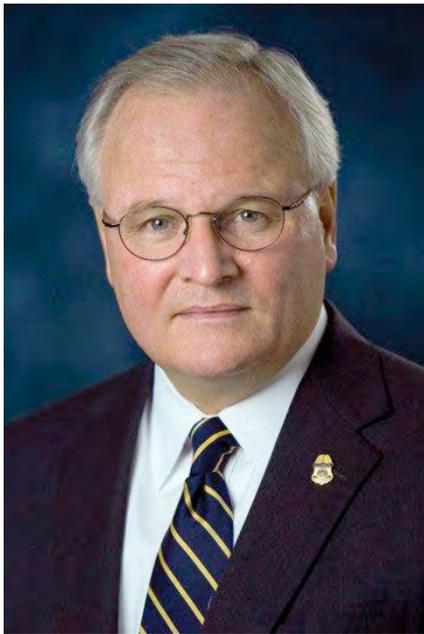
"It's not a good feeling knowing that we are being sued," said *Herald* editor-in-chief Andrew Henderson, whose publication has been raising money to pay legal fees. "I just hope that something beneficial comes out of all of this for everyone involved."

## The Targets

Sharyl Attkisson

extract from *The Smear*, 2017

JAMES TOMSHECK learned firsthand how the government can exploit cozy relationships with the press to help destroy a target. He became victim of a smear after blowing the whistle inside U.S. Customs and Border Protection (CBP) — an agency he insists is riddled with corruption. Tomsheck was an ethics watchdog at CBP with the title of Assistant Commissioner for Internal Affairs. He tells me his department's anticorruption work was extremely important. "I had been in law enforcement in three different agencies for forty years," he explains. "And at no point of it, thirty-one years of which was in federal law enforcement, had I ever encountered anything approximating the level of corruption, misconduct, and excessive use of force." He says his troubles began in 2009 when a man named David Aguilar became deputy commissioner of the agency.



James Tomsheck

At that time, “there was a concerted effort to obstruct the Office of Internal Affairs and restrict information that we were sharing with our colleagues and the FBI,” Tomsheck tells me, “and to diminish the opportunities to work in a fully cooperative and collaborative way with other agencies.”

Matters came to a head in the summer of 2010. Aguilar called Tomsheck and his deputy, James Wong, into a meeting and allegedly asked them to do something shocking.

“What we were told to do was ‘redefine corruption’ in a way that would reduce the actual number of corruption arrests” within CBP, Tomsheck says. Apparently Aguilar wanted the current number of corruption arrests inside the agency, which was on the north side of eighty, to look much smaller.

“Mr. Aguilar actually took a sheet of paper and wrote a number that was twenty-something,” Tomsheck alleges. “He never actually turned it towards us, but wrote the number taking up a full eight-and-a-half-by-eleven sheet of paper, and kept tapping it with his pen as he was explaining how we would go about redefining corruption in a way to reduce the number of corruption arrests.”

“How would one do that — redefine corruption?” I ask Tomsheck as he recounts his experiences.

“It couldn’t be done,” he answers, “and more importantly, we wouldn’t

consider doing it. Mr. Wong and I clearly understood that we were being given an order to cook the books. When we returned to our offices and looked at one another, we both had the same reaction, that we had been in a bad scene in a very bad movie.”

(As I researched this account, Wong corroborated Tomsheck’s story. Aguilar and the CBP declined comment.)

When Tomsheck refused to cooperate with the alleged request to redefine corruption, he says, the assassination of his character began. Among other pressures, he received a lowered job evaluation. Eventually he was reassigned out of Internal Affairs. And although he says he wasn’t provided the rationale for the reassignment, within hours somebody had anonymously given the press an explanation designed to disparage him. It was a false narrative that he’d been removed for not being tough enough in cracking down on use of excessive force at CBP.

Tomsheck knew it was a smear.

“There were media reports, that surfaced hours after my assignment, that I had been removed because I had been insufficiently aggressive in dealing with excessive-use-of-force issues, and had failed to properly discipline Border Patrol agents,” he tells me.

“What do you think is the reason you were removed?” I ask.

“I don’t think there’s any question the reason I was removed was because of the aggressive posture that I and my colleagues had taken with regard to corruption, misconduct, and aggressive use of force.”

I ask who he thinks leaked the false story to the press about why he was reassigned. He says there’s no doubt in his mind it involved high-level government officials. Tomsheck sued the government over his treatment and received a settlement.

As he recounts his experience, Tomsheck speaks to me in a measured tone, but I can sense the anger and frustration he’s suffered. He took pride in his job as the ethics cop for Customs and Border Protection, and he was good at it. But those who wanted him out of the way won the day. And they managed to use the press to drag his name through the mud as they pushed him out the door. It’s nearly impossible to fight the heft of the government

complex and its media partners when they go after you. They can define who you are. They can destroy you.

John Dodson got the same message when he, too, became a government whistleblower in 2011.



John Dodson

“You’re, in a sense, drowning where you can’t seem to find the surface,” Dodson tells me of the massive smear campaign he withstood. “It’s not just drowning; you’re trapped in this cube of water and you don’t know which way is up, which way to get out.”

Dodson, a special agent with the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), blew the whistle on ATF’s secret “Fast and Furious” gunwalking program under the Department of Justice (DOJ). Under Fast and Furious the government did the unthinkable: it allowed thousands of assault rifles and other weapons to be trafficked to Mexican drug cartels. Dodson was on the ATF team that was required to execute the case and watch idly as guns were “walked” across the southern border. He’d raised internal objections to the outrageous idea that federal agents like himself were forced to allow traffickers to transport guns to cartel thugs. But his objections just got him labeled as a troublemaker. When a Border Patrol agent named Brian Terry was murdered in Arizona near the border in late 2010 by illegal immigrants armed with some of the Fast and Furious-trafficked weapons, Dodson took steps to expose the government’s ill-advised scheme. First, he quietly brought the facts to Senator Charles Grassley. Grassley asked the Justice Department about the allegations. DOJ responded in a letter dated February 4, 2011: it categorically denied Dodson’s

claims. In essence, the Justice Department was calling Dodson a liar.

“I was hugely taken aback by that,” Dodson tells me today. “It was something I never conceived of happening, that DOJ would flat-out call me a liar in an official letter to Congress.”

“I was prewarned,” Dodson continues. He explains that a staffer in Senator Grassley’s office had tried to explain what he’d be up against as a whistleblower against ATF and DOJ leaders. “But even though I was prewarned, I was really surprised when the government’s smear of me first started with the February 4, 2011, letter.”

As an investigative reporter for CBS News at the time, I connected with Dodson for an exclusive television news interview shortly after that letter was written. The resulting story on the *CBS Evening News* received international attention. It also spurred the government to launch coordinated efforts to publicly smear Dodson — and me, as the reporter pursuing the uncomfortable truth. And government operatives would ultimately use other journalists to accomplish the smears.

“[Then-acting] ATF director Kenneth Melson had a town hall meeting at Baltimore field division within days of the CBS interview,” says Dodson. “And when he was asked about [the gunwalking] he simply told the entire Baltimore field division that I was a disgruntled employee, that I screwed up one case so badly that it couldn’t get prosecuted.” In reality, Melson was not only well aware of the illicit gunwalking; he’d also remotely monitored some of the questionable firearms trafficking activities through a live “pole cam” set up to feed video to his computer in Washington, DC. Yet he was publicly denying any of it ever happened.



Sharyl Attkisson

In my early days of reporting on the case, I meet Dodson at his Arizona home. “I want to show you something,” he says as he leads me outside to his vehicle, parked on the dusty shoulder of the road in front of his house. He points to tracks indicating someone had been fiddling around with it during the night. There are telltale smudges in the dust on the exterior, indicating, he believes, someone had come to remove a hidden tracking device they’d placed earlier. “I know this,” he says. “I do it for a living.”

Later, when forensics experts identified unauthorized remote intrusions into my personal and CBS work computers, they were able to see that the intruders had viewed my Fast and Furious-related documents and photos. Someone had even planted classified documents on my CBS laptop. My mind flashes back to Dodson. He’d said the government was trying to frame him as if he’d released classified information. Was that related to the classified documents planted on my computer by unauthorized intruders?

At one point during the Fast and Furious scandal, someone inside the government trying to destroy Dodson leaked to the press a highly sensitive document about his undercover work at ATF — and the press published it. He says it put his life in danger. It was later revealed that the source of the improper leak was none other than Obama’s US attorney for Arizona, Dennis Burke, who oversaw ATF’s Fast and Furious case. After Burke was exposed as the leaker of the confidential documents on Dodson, he was forced to resign.

Dodson says the Obama administration’s effort to destroy him also included assigning private investigators to dig up dirt on him, attempting to frame him for supposedly revealing classified information, blowing his undercover work, and — he believes — reading his personal email and listening in on his phone calls. But one of the biggest smears against Dodson was what I and many others viewed as a hit piece in *Fortune* magazine written by Katherine Eban.

“My ex-wife called me in December [2011],” Dodson recalls. “She said that she had just been contacted by a reporter for *Fortune* magazine who wanted to ask her some questions

about me and our divorce. My ex was terrified. She didn’t know what to say and gave me the woman’s information. I called her directly.”

“What did Eban say when you called?” I ask.

“She said she thought I was a fascinating in-depth central character. I told her I thought it was piss-poor journalism for her to make her first call to my ex-wife. I demanded to know how she got [my ex-wife’s] name and phone number and she wouldn’t tell me.

“I know it was a smear,” Dodson continues in his opinion. He tells me that Senator Grassley’s office “had pretty much already established thoroughly that the *Fortune* article was a hit piece sanctioned by DOJ and ATF to smear me. That was the sole purpose.”

Indeed, the *Fortune* article published in June 2012 incorrectly portrays him — the whistleblower — as the one who was running guns, motivated by anger and incompetence.

“The article was so bad that a joint effort between Senator Grassley and the House Oversight Committee took the time to go through and issue a congressional report rebutting [the *Fortune* story] line by line,” says Dodson. “It was completely and utterly full of factual errors, not even in the realm of reason.” The oversight committee demanded — but didn’t receive — a retraction. The claims of Katherine Eban, the woman who wrote the *Fortune* article, were also rebutted by the findings of an investigation by the Department of Justice inspector general.

After the article and the other smears, Dodson had an uphill battle to rescue his reputation in the court of public opinion. Many in the news media continued to report incorrect talking points about Fast and Furious and Dodson — as provided by the Obama administration and its allies. Ultimately Dodson sued *Fortune*, alleging “the article is fictitious in the sense that it contains facts that Defendant knew to be false prior to publication” and that Eban “falsely reported that [he] initiated gun walking activity based on a grudge he had with his superior.” *Fortune* eventually settled Dodson’s case on confidential terms and issued a “clarification” stating: “The article did not intend to

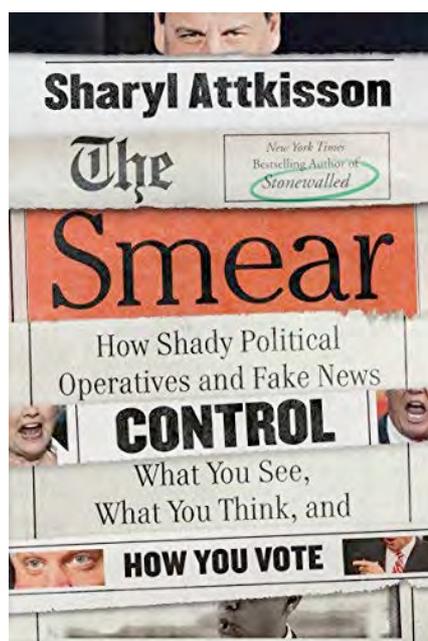
suggest that John Dodson or any other ATF agent advocated a policy of ‘walking guns,’ and any inference to the contrary is incorrect.”

For Dodson, the professional and personal toll of his whistleblowing and the subsequent smears was immeasurable. On any given day, he didn’t know if he would be followed, fired, or arrested. “The DOJ tried to indict me at one point [on false charges],” he says.

As the target of a smear, “you want to set the record straight,” Dodson tells me. But nobody wants to believe. “Part of it pissed me off. How dare they call me a liar? How dare they say this when I know I’m right, telling the truth and can freaking prove it. You go from scared to angry back and forth.”

I ask Dodson how he managed to persevere. He pauses to reflect. He’s been asked nearly every question on the planet about his tribulations of the past couple of years. But not this one.

“I look back on it now and wonder, How did I manage to get through it? How did I manage to keep my job and freedom?” he says. “I don’t know, other than blind luck. I’d like to say that right is right and the truth always comes out, and that when you’re telling the truth you don’t have to worry. But you do have to worry because perception is reality and all these elements, much greater elements than me, are treading in some very dark deep waters and I was the most expendable person in there.



“It was a bad place to be. And I’ve been there on the threshold of losing everything and smeared and completely cast out. And I know the fear and stress and panic. I was so stressed out I literally grew a hump from just the knotted-up muscle tissue on my left shoulder. I’m better mentally and emotionally than before I blew the whistle, but professionally, my career is in the toilet. I’m a lot better today but I’m disenfranchised about the government and our system.”

Sharyl Attkisson, *The Smear: How Shady Political Operatives and Fake News Control What You See, What You Think, and How You Vote* (New York: HarperCollins, 2017), pp. 158–161

## Argentinian lesson: evil triumphs when good people fear to stop it

Acting as a whistle-blower got Albert Nisman killed. Is that how evil succeeds?

Phyllis Chesler  
*Arutz Sheva* 7, 2 January 2018



Phyllis Chesler

EVIL TRIUMPHS when good people are afraid to stop it.

Evil also triumphs when such frightened people see that they, too, may prosper in the wake of wrong-doing: a Jew’s appointment — or apartment, a dissident’s library or chinaware may become their ill-gotten gain.

Evil triumphs when good people look away and remain silent; or when they side with the oppressor, not his victim; perhaps doing so will allow them to feed their children, keep their

jobs, and to live another day.

Few wish to suffer a whistleblower’s fate which includes being shamed, demonized, ostracized, fired, and being prevented from working at that factory, in that city, in the same profession.

Some whistle-blowers are forced into exile.

In 1977, Christoph Meili exposed the Swiss bank where he worked for destroying the records of Holocaust survivors. He fled his country and received political asylum in the United States.

Some whistleblowers are murdered.

In 2015, Argentinian prosecutor Alberto Nisman was killed for having documented the enormous, government-level cover up of Iran’s role in the bombing-murders of Jews.

The challenge of stopping radical evil exists whether we are referring to genocide, exile most cruel, and mass murder, or crimes against women and racially despised minorities.

What must good people do?

First, we must find ways to remain connected to those whom prejudice silences, renders less than human.

Survivors of serious atrocities say they are haunted by those who heard their screams but turned their backs, closed their doors, remained neutral, refused to take any stand other than an opportunistic one.

One cannot remain a bystander without becoming complicit. Morally, one must “take sides.”

But, once a person takes the side of anyone who’s suffered a grave injustice, listens to her, believes what he says, tries to help him — that quiet act of humanity and courage may be viewed as a traitorous act.

My advice?

Commit such treason as often as you can.

Phyllis Chesler is a Shillman-Ginsburg Fellow at the Middle East Forum and is the author of sixteen books, including *Women and Madness*, *Woman’s Inhumanity to Woman*, and *The New Anti-Semitism*. She has written four studies about honor killing, Chesler may be reached at her website <http://www.phyllis-chesler.com>

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## Snowden unveils phone app

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The former National Security Agency contractor who exposed US government surveillance programmes by disclosing classified material in 2013 has a new job: app developer.

Edward Snowden in a video message on Friday unveiled a new phone app he helped create, called Haven, that aims to protect laptops from physical tampering.

Snowden says it is an open-source tool designed for human rights activists and other people at risk and it uses an Android phone's sensors to detect changes in a room.

The software was developed with the Freedom of Press Foundation and The Guardian Project. It has been greeted with mixed social media reactions, with some people celebrating its security capabilities and others saying they don't trust Snowden.

Snowden has lived in Russia since 2013, when the country gave him asylum, resisting US pressure to extradite him.

— *South China Morning Post*, 24 December 2017



A man stands in a phone box next to graffiti by street artist Banksy spoofing government spying scandals. Photo: Reuters

## 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.

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