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## BUCKING THE SYSTEM

### ANDREW WILKIE AND THE DIFFICULT TASK OF THE WHISTLEBLOWER

WHISTLEBLOWERS ARE PART of society's alarm and self-repair system, bringing attention to problems before they become far more damaging.<sup>1</sup> Australian whistleblowers have spoken out about police corruption, paedophilia in the churches, corporate mismanagement, biased appointment procedures, environmentally harmful practices and a host of other issues.

Although whistleblowers are extremely valuable to society, most of them suffer enormously for their efforts. Ostracism, harassment, slander, reprimands, referral to psychiatrists, demotion, dismissal and blacklisting are among the common methods used to attack whistleblowers. Bosses are the usual attackers with co-workers sometimes joining in.

Many whistleblowers are conscientious, high-performing employees who believe that the system works. That's why they speak out. They believe that by alerting others to a problem, it will be dealt with. Many do not think of themselves as whistleblowers at all – they believe they are just doing their job. So they are shaken to the core when the response to their public-spirited efforts is to vilify them as disloyal, to question their work performance, to withdraw emotional support and to mount attacks. As well as suffering financial losses and severe stress, whistleblowers are at increased risk of relationship breakdown and health problems.

Even worse than this, though, few whistleblowers seem to bring about any change in the problem they speak out about. The treatment of whistleblowers is a double disaster for society: capable and courageous individuals are attacked and sometimes destroyed, while the original problems are left to fester.

Bill Toomer was Western Australia's senior quarantine inspector in 1973 when he requested

fumigation of a ship in Fremantle because of the presence of mice and rats. Fumigation is costly and time-consuming and hence disliked by shipowners. Previously, in Victoria, Toomer had refused bribes to ignore infestations of ships. In the Fremantle case, Toomer was overruled by his superior and before long was fined, demoted and transferred. In 1980, due to the pressure, he retired at age 45. In the past three decades, his case has been brought before numerous politicians and agencies, including the Ombudsman, the Administrative Appeals Tribunal and the Merit Protection and Review Agency, with a number of them holding formal inquiries. Even today, Toomer's supporters continue to petition the government for compensation and have gathered evidence that Toomer was set up in Fremantle for removal from ship quarantine duties.<sup>2</sup>

For one man to lose his career is bad enough. For millions of dollars to be spent on inquiries is an added burden. But in some ways worst of all is that focusing on the treatment of Toomer distracted attention from the original issue of corruption in quarantine inspections.

Mick Skrijel was a crayfisherman in South Australia in 1978 when he reported to police and politicians what he thought were drug drops off the coast. Afterwards, his catches were stolen, his boat was destroyed by fire, his house was partially burnt and he was bashed. Moving to Victoria in the 1980s, his allegations were passed to the newly created National Crime Authority. Skrijel leafleted and picketed NCA headquarters over its inaction – and then the NCA investigated Skrijel himself, who went to prison for five months after a raid found explosives and marijuana on his property. His conviction was later quashed by the Victorian Supreme Court: the

judges found the explosives and marijuana could have been planted. Investigating the matter at the request of the government, QC David Quick recommended an inquiry, with royal commission powers, into the possibility that Skrijel was framed, but the government declined.<sup>3</sup>

Vast efforts have been made by Skrijel and his supporters to pursue justice over his case. Somewhere along the line, the original issue of the South Australian drug trade dropped off the main agenda.

These are but sketches of cases that are incredibly complicated, as are most whistleblower stories. But after hearing hundreds of such stories, there is a burning question that is easy to articulate: How can whistleblowers do better?

### DISSIPATING OUTRAGE

To develop better tactics for whistleblowers, it is useful to examine injustices that cause outrage. Consider, for example, the Dili massacre.<sup>4</sup> On 12 November 1991, thousands of East Timorese joined a funeral procession in Dili, using the occasion to protest against the Indonesian occupation of the country. As the crowd entered Santa Cruz cemetery, Indonesian troops that had surrounded the marchers opened fire without warning.

Unlike earlier massacres, this atrocity was witnessed by Western journalists and captured on videotape by filmmaker Max Stahl. Their reports led to international outrage against the Indonesian occupiers and a massive boost for the international support movement for East Timorese independence. The brutal assault on the funeral procession, intended to intimidate and subdue the independence movement, instead had the opposite effect of greatly increasing support for it. In short, the attack backfired on the Indonesian government.

In attacks like this, there are five methods commonly used by attackers to inhibit outrage. The first is cover-up. In previous massacres in East Timor, censorship had prevented information getting out in a timely and authoritative fashion. After the Dili massacre, the Indonesians cut off phone services out of East Timor. They also alerted Australian customs to search Max Stahl, but he wisely gave his videotapes to someone else who smuggled them out of East Timor.

The second method of inhibiting outrage is to devalue the target. Indonesian officials made derogatory comments about the protesters, for example calling them "scum", but this abuse, and Javanese

assumptions of ethnic superiority, had little salience outside Indonesia.

The third method is to reinterpret the events. Indonesian officials blamed the events on the protesters, alleging they provoked the attack and that the shooting was unintentional. They gave a figure of just nineteen dead, later raising it to fifty. A separate investigation counted at least 271 killed.

The fourth method of inhibiting outrage is to use official channels such as inquiries and courts to give the appearance of justice. Immediately after the Dili massacre, the Indonesian government set up an inquiry, which gave mild sentences to a few officials. The Indonesian military had its own inquiry that whitewashed the perpetrators.

The fifth and final method regularly used to inhibit outrage from injustice is intimidation and bribery of targets, witnesses and functionaries. After the shooting, Indonesian troops arrested, beat and killed numerous East Timorese independence supporters. This may have intimidated some East Timorese but it had little effect on international audiences.

By looking at methods of inhibiting outrage, it is possible to gain insight into how to *promote* outrage. Cover-up can be countered by methods such as collecting documents, writing stories and using alternative media. Devaluation can be countered by humanising people under attack, for example through meetings and personal stories. Reinterpretation can be countered by presenting the facts and emphasising the injustice involved. The false appearance of justice through official channels can be countered by avoiding or discrediting these channels. Intimidation and bribery can be countered by refusing to acquiesce and by exposing these methods as improper.

Whistleblowing usually involves a double injustice. First is the problem – corruption, abuse, a hazard to the public – about which a person speaks out. Second is the treatment of the whistleblower. Both of these have the potential to backfire, if people recognise them as matters for concern and information about them is communicated to receptive audiences. Therefore it is predictable that perpetrators will use these five methods of inhibiting outrage. That is exactly what can be observed in case after case.

### WHAT HAPPENS TO WHISTLEBLOWERS

Those who attack whistleblowers usually like to keep things quiet. Only foolish employers announce to

the world that they have sacked a prominent dissident. When whistleblowers go to court, employers often agree to a settlement under the condition that neither party speaks about the settlement itself. Acceptance of such a so-called gagging or silencing clause is often a precondition for a settlement.

Whistleblowers often want to keep things quiet too. Many of them are embarrassed and humiliated by the allegations against them and do not want others to be aware of their difficulties. Often they are making complaints to official bodies and assume that publicity will hurt their case. In many cases, lawyers advise keeping quiet. The upshot is that whistleblowers commonly cooperate with employers in covering up information about what is happening. The same applies to the original problem about which they spoke up. The result is that outrage is minimised.

The second method of inhibiting outrage is to devalue the target, in this case the whistleblower. This is part of the standard treatment: harassment, referral to psychiatrists, reprimands and the like are potent means of discrediting a person in the eyes of fellow workers. Spreading of rumours is part of the package, including malicious comments about the whistleblower's work performance, personal behaviour and mental state. To counter this, whistleblowers need to behave impeccably – a difficult task when under intense scrutiny and immense stress – and to document their good performance and behaviour. This can be done, but only if the whistleblower is able and willing to muster the information and make it available.

Reinterpretation of the events is the third method of inhibiting outrage. Employers typically deny any wrongdoing and say that treatment of the employee is completely justified and nothing to do with public interest disclosures. Whistleblowers need to challenge the official line by providing solid documentation for every one of their claims.

The fourth method is to use official channels that give only the appearance of justice. An employer might dismiss an employee and then, when the employee challenges the decision, put the matter through an appeal process that rubber-stamps the original decision. That is indeed what happens in many cases. But there is another dimension to official channels. Whistleblowers regularly go to outside bodies, such as ombudsmen, auditor-generals, anti-corruption commissions, administrative appeals tribunals and courts. They contact politicians. They

try to invoke whistleblower protection laws.

It is easy to assume that these bodies do indeed provide justice. In practice, whistleblowers find that they almost never work. In the largest study of whistleblowers in Australia, William De Maria found that they reported being helped by an official body in fewer than one out of ten approaches, and in many cases they were worse off.<sup>5</sup>

Yet most whistleblowers believe that justice is to be found somewhere in the system. So they make a submission to an agency, wait months or years and then, when the result is negative, go on to another agency. This is an ideal way to reduce outrage from the injustice being done, because the official bodies give the appearance, though seldom the substance, of dispensing justice.<sup>6</sup>

The fifth method of inhibiting outrage is through intimidation and bribery. Whistleblowers are often intimidated by threats and actual reprisals, and the way they are treated serves as an object lesson to co-workers, most of whom avoid the whistleblower for fear of becoming a target themselves. Employees know that their jobs are safer if they do not speak out; sometimes promotions are in order if they join in a witch-hunt.

It is perhaps no surprise that all five methods of inhibiting outrage are found in whistleblower cases. What is disturbing is that whistleblowers so often collaborate in these methods, especially in cover-up and using official channels. They can be highly reluctant to focus on taking their message to the widest possible audience. Yet this has proved time and again the most effective way to mobilise support for addressing the matter raised by the whistleblower and for providing personal protection from reprisals.<sup>7</sup> It so happens that the recommendations of experienced whistleblower advisers challenge each of the methods of inhibiting outrage.<sup>8</sup>

#### ANDREW WILKIE

Just a week before the United States government launched its invasion of Iraq in March 2003, Andrew Wilkie, an analyst in the Office of National Assessments, resigned from his position and challenged the Australian government's reasons for joining the assault.<sup>9</sup> Through good sense and good luck, Wilkie avoided every one of the traps that snare most whistleblowers.

First, and most importantly, Wilkie spoke out in public. He did not report his concerns through

official channels by writing a memo or talking to his boss. Instead, he contacted veteran journalist Laurie Oakes, who made Wilkie's resignation and revelations into a top news story. Wilkie stuck with this approach, doing numerous interviews and giving many talks in the following months. His approach was the antithesis of cover-up.

Second, because of who he was and how he behaved, Wilkie resisted devaluation. His background was conservative. In public, he wore a suit and tie and spoke calmly and factually, a terrific performance for someone under so much stress. His background, demeanour and principled stand undermined attempts to portray him as a traitor or a radical. When government figures made personal aspersions against Wilkie in Parliament and claimed that he was not an Iraq expert, this backfired as journalists exposed their unscrupulous behaviour and double standards.<sup>10</sup>

Third, Wilkie kept the focus on the main issue, the official reasons for Australia joining the attack on Iraq. He consistently countered the government line and did not get distracted into issues outside his expertise.

Fourth, by resigning, Wilkie avoided all the usual reprisals at work. He also avoided the exhausting and time-consuming appeals to various official bodies.

Fifth, Wilkie stood up to intimidation. He might have been charged under one of the government acts that require public servants to keep quiet, but by going public he made it difficult for the government to act against him. By speaking out, he also resisted the bribery implicit in holding a job by keeping quiet.

Wilkie had perfect timing. To maximise outrage, a message needs to get to an audience when it is most receptive. Just before the invasion of Iraq was the ideal time, when media attention was intense and debate over justifications was fierce. Wilkie punctured the apparent unanimity of government Iraq experts, and so made a tremendous impact on the debate. Wilkie's timing was also ideal in that mass protest against the Iraq invasion was at its height: there was a large receptive audience for his message.

According to the backfire model, Wilkie did just about everything right. But that does not mean things were easy for him. After all, he sacrificed his career for the sake of speaking out. It is worthwhile remembering though that large numbers of whistleblowers lose their careers, and years of their lives, in a futile effort to obtain justice within the system. Seldom do they have any lasting effect on the issue

about which they raised the alarm. Whistleblowers have much to learn about being effective. Whether or not one agrees with Wilkie's claims about Iraq, his method of speaking out is a model for others.

Whistleblowers and their supporters have much to gain by thinking strategically. If they put themselves in the shoes of the guilty parties, they can imagine tactics that will keep the main issue off the public agenda. Cover-up, attacks on the credibility of the whistleblower, rationalisations and intimidation, are predictable, so preparations should be made to counter them. Official channels also serve to keep issues out of the public eye by moving attention to the treatment of the whistleblower and treating the matter in-house. It is an immense challenge to most whistleblowers to stop assuming justice can be obtained within the system and instead to seek support and vindication in the court of public opinion.

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