

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

The



Whistle

No. 90, April 2017

Newsletter of Whistleblowers Australia (ISSN 2205-0299)

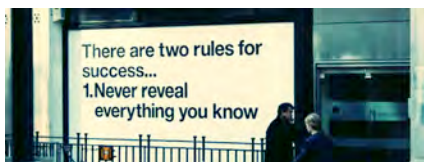


Know success when you see it

Cynthia Kardell

I'VE LISTENED to many whistleblowers over the years and one of the things that disappoints all of us is that we rarely get the outcome we'd like and that is a really difficult thing to grapple with.

If we let our imaginations fly we would have the boss, the lowlife, whoever, burnt at the stake or least thrown to the wolves, but if deep inside we know that isn't ever likely to happen, what does success look like? Would we know it even if it was staring us in the face?



I'm reminded of a story out of many stories that went something like this. You can be my caller for the purpose because I want to explain how weighing up the facts against the possibilities of doing this or that and the limitations of the various players and the system can give you a pretty good idea of what success might look like — if you want to take it.

You're a postdoctoral student. Your research project is coming along nicely, your boss has been encouraging, even flattering and then, shock horror, some of your results turn up in his latest paper without any mention of you or your work at all. Worse still, he's skewed them to give him the result he wants. Alarms shriek, it's a fraud. He's plagiarizing your work — who would've thought! Your blood pressure is through the roof and you're off, across the courtyard, your research clutched to your chest.

His boss wants you to calm down, can there be a mistake, maybe he didn't mean to? What, do you mean he didn't mean to, you splutter, beside yourself with rage. You agree to detail the issues, facts, proof etc. and come back.

A week later he calls you in. He's

had a look at your information and he's asked your boss what gives and apparently, he thought you didn't mind. Didn't mind, you squawk! You can't even see straight, you're so angry. You gather yourself and try again. You know the facts are there, but he won't budge. There'll be no court martial, no public hanging — because the paper has been withdrawn.

You can barely get back to the lab, your feet won't do what they should, but you can't let it go, so you arrange to see the person next up the line. The head boss quietly closes the door and before too long, he gets up close and personal. "What do you want?" he thunders, "He withdrew the paper didn't he? I'm not going to do anything."

Your health is in a mess and your research is in a heap. You've been off work, on stress leave and you've heard your fraudster boss has been busy working up support in anticipation of you not letting it go. Your research is under threat. You can't see a way out. And then it dawns on you. You've been so busy grieving, you didn't even see success when you had it.

You ask yourself — what has to have happened between the two men for your boss to get to the point where he agreed to withdraw his paper? This has to be the key, because your boss had to have agreed he was wrong or at the very least he must have sat silent when he was pressed to prove you were wrong. And that means forever and a day, he'll be the one who will have to mutter something or other, when asked to explain why he withdrew his paper. And he won't be able to claim that he was poorly treated and forced to withdraw it, without one of his friends asking him the bleeding obvious: why didn't you prove your researcher was wrong?

This is when the earth moved. This is what success looks like, but if you can't see it, if you keep on piling complaint upon complaint about each and every failure up the chain, you will overplay your hand and lose the power that you had — from the moment your boss withdrew his paper. This was the moment when all the planets were aligned and the story was yours for the

telling. But if you'd pushed hard for a flogging at that point, you'd risk losing that moral, very personal power to control the narrative.

You see, we all need to learn not to take it any further than we need to prove our point. It's not easy. If we're wise you'll leave it at that, having worked out what's possible before you risk losing a whole lot more — your research project, your future. And you can afford to be gracious and build your future on their relief that you didn't press it further, because you've all coalesced around the truth. In other words, you proving you had the facts and their personal limitations decided the outcome. True, no public flogging — but the paper has been withdrawn — at your call.

One last issue needs to be thought about. Your fraudster boss always knew it was a bluff, but he underestimated you. His boss pushed him only as hard as he needed to get him to back down, worrying that it could all get a bit ugly if his bluff didn't work. They both chanced their arm in a sense, always knowing they didn't want to take it further if they were really challenged to prove it. They both had their personal limitations, but so much in life is played out in these terms and it is not always a bad thing. So we need to gauge just how hard to push to get the result you need, not want — always keeping in mind that if we really need that public flogging — it might well be ours.

In this story we never did get to talk about whether going to the fraudster's boss was a good idea in the first place, but on balance it seems it was. Then his boss took a similar approach when he dealt with you, perhaps thinking he could scare you off — which he did. He bullied you. Not pleasant or proper, but if you've any sense, sometimes you'll look past the bully boy tactics when you're thinking about how next to play your hand. Take them into account, but don't let them define your next move.

(continued on page 16)

Death threats and smear campaigns, the lot of a whistleblower

Adele Ferguson
Sydney Morning Herald
1–2 April 2017

THE CULTURE of “Don’t dob in a mate” strikes at the heart of our poor treatment of whistleblowers. From an early age we are told to keep quiet and avoid the stigma of being a snitch or a troublemaker.

But the fundamental question that needs to be asked in the joint parliamentary inquiry into whistleblowers is: why should whistleblowers be protected?

There are numerous examples of the contribution whistleblowers have made to society in exposing wrongdoing. But for all the good they have done, few come away unscathed.

The Commonwealth Bank financial planning whistleblower Jeff Morris has lodged a submission to the inquiry which is nothing short of alarming.



Jeff Morris. Photo: Rob Homer

What he went through reads like a Stephen King thriller. In it he talks about a decision by a certain person at CBA “to finally get rid of me.” He wasn’t referring to his job.

By chance, he heard from a psychiatrist that threats had been made about shooting whistleblowers at the bank — a group which included Morris.

The person who allegedly made the threats has been redacted from the submission.

The stress became too much.

“Talk of shooting made me wonder if I had put my family at risk of being collateral damage,” he said. “I spoke to my contact at ASIC. His comment, that it was probably bullshit but if I was worried to go to the police, left me

numb.”

He said the stress led to several long stays in hospital for his wife. Then the unthinkable happened.



Companies know the damage that can be wielded when whistleblowers aren’t contained. Photo: Paul Jeffers

“I came home to an empty house one night. My wife had left with my children, aged five and seven.”

This was the nadir. “Like a boxer face down on the canvas staring at a whiteout. I was diagnosed with PTSD. It was almost a relief to know.”

Whatever the case, it serves as a chilling illustration of the risks whistleblowers take when they speak up.

High stakes

The inquiry will complete a report on June 30, including a list of recommendations.



Misconduct shouldn’t be buried and companies should not be allowed to cover it up. Illustration: Simon Bosch

The stakes are high. But, at the end of the day, it is then up to the government to fix the piecemeal system and create a better framework, or fiddle around the edges.

In corporate Australia, boardrooms are grappling with what it means for them.

Companies know the damage that can be wielded when whistleblowers aren’t contained, particularly if they take their concerns to the media. Look no further than the Commonwealth Bank (both in financial planning and

its CommInsure division), National Australia Bank, IOOF, 7-Eleven, CIMIC Group (formerly Leighton Holdings), Reserve Bank subsidiary Securrency, Unaoil and energy giant Origin.

It is why the treatment of whistleblowers that go to the media needs to be properly addressed. A number of institutions will fight tooth and nail at the idea of putting it into law. Others will try to water it down to the point where it no longer poses a threat.

But going to the media is in the public interest.

The 7-Eleven whistleblower went to the media with allegations of systemic wage fraud across the franchise network which resulted in policy changes and a compensation scheme that so far has paid out \$83 million to exploited workers.

The president of Whistleblowers Australia, Cynthia Kardell, argues that legislation should be amended to allow a whistleblower to go to the media, a politician or other third party at the outset, but at a policy level encourage — even reward — internal disclosure as a first step.

“It would be a powerful practical deterrent to management bad behaviour — but if it did occur, management would not be able to cry foul and the wrongdoing, not the whistleblower, would be the focus — which is as it should be,” Kardell says.



In corporate Australia, boardrooms are grappling with what the outcome of the inquiry into whistleblowers will mean for them. Photo: Louie Douvis

She is right. Misconduct shouldn’t be buried and companies should not be allowed to cover it up.

Kardell argues that the only way things can change is to overhaul the system to the point where the preferred option for a company is an investiga-

tion, not a cover-up.

“This is what will keep management on the straight and narrow and whistleblowers safe from reprisals and in their jobs,” she says.

The way to stop cover-ups is to introduce laws that publicly reward good choices and punish bad choices.

“The entire process must be open to public scrutiny, with all decisions reported in real time on the organisation’s website — so that, over time, cover-ups will no longer be seen as the ‘smart’ option.”

For this to happen, the decision of whether or not to investigate a whistleblowing disclosure must be taken out of the hands of management. The person delegated with the authority to investigate a whistleblower claim must be legally independent of management.

In addition, a criminal and civil cause of action and financial penalty should apply if management fails to support a whistleblower.

And, to ensure there are no conflicts, external watchdogs should be banned from referring disclosures back to the organisation’s management as is now the case, Kardell argues.

“For far too long, external watchdogs have naively trusted in self-regulation, in secret,” she says.

She recommends the establishment of a public interest disclosure agency (PIDA) to register, promote, protect and support whistleblowers. It would have the powers to seek injunctive relief for whistleblowers, prosecute claims of reprisal and seek penalties for the failure of management to support whistleblowers and whistleblowing.

Kardell also suggests the creation of a “false claims” division within the PIDA that has the power to register and monitor false claims actions and receive, assess and resolve claims for compensation under a false claims scheme. Depending on the number of crimes and money involved, this could make the PIDA self-funding.

The 7-Eleven whistleblower, in his submission, says there need to be financial safeguards for whistleblowers so they don’t have to make a choice between justice and financial security. “This is the reality of life as a whistleblower in modern corporate Australia.” Indeed.

Dennis Gentilin, NAB whistleblower, probes the origins of ethical failure

Joanne Gray

Australian Financial Review

31 March 2017

DENNIS GENTILIN was a 29-year-old foreign exchange trader working in the London office of National Australia Bank’s institutional division back in 2004, when he figured out that hundreds of millions of dollars in foreign exchange losses were being covered up.

The discovery deeply troubled Gentilin, who, after a brief internal struggle, turned whistleblower, taking his concerns to his bosses. Eventually, an internal investigation and prosecutions led to the resignation of NAB chief executive Frank Cicutto and chairman Charles Allen and a decade of soul-searching for NAB.



Extraordinarily, the bank continued to employ Gentilin, who headed the institutional sales desk and later joined the corporate strategy team.

“There were just some really good people around me at the time who understood what I’d been through, the environment I was in, what I’d done,” Gentilin says. “And instead of viewing me as used goods to be put on the scrap heap, they kept seeing potential and providing opportunity.”

It’s a highly unlikely outcome, as many whistleblowers are often edged out of their jobs.

For example, former CommInsure chief medical officer Dr Benjamin Koh was sacked in August last year for alleged security breaches. A joint Fairfax and Four Corners investigation found that CommInsure was denying valid insurance payouts. Koh unsuccessfully tried to speak out as a whistleblower inside the Commonwealth Bank’s insurance unit.

Meaningful social purpose

For many years Gentilin refused to be defined by his whistleblower tag. But his experience was so searing he has written a book — *The Origins of Ethical Failures* — which he hopes will help leaders trying to build an ethical culture in their organisation.

NAB’s current chairman, Ken Henry, has publicly backed Gentilin’s book, and in the foreword to the book he argues that leaders must strive “to articulate a meaningful social purpose for their organisation.”

“One of the lessons from Dennis’s book is that no matter what you do you shouldn’t assume that your organisation is infallible,” says Henry.

“I think the strongest lessons from Dennis’s book is to be open to the possibility that there are problems there that you don’t know about and to be questioning and engaging with people when you discover things that just look like they might be a little bit wrong.”

Gentilin found the experience of being a whistleblower “gruelling and harrowing”.

Now 41, he wants to start a debate about corporate culture in Australia.



Dennis Gentilin

How to behave

Part of his message comes from investigating his own response when he first learned of the breaches. He didn’t really know how to behave. The practice of hiding losses was known as “smoothing” making it sound like common practice. Gentilin worried

what would happen to him if he spoke out.

“I didn’t know what to do. I felt that the way for me to get out of there was to resign, to walk away. I look back now and think that’s just crazy.”

In a moment of desperation he asked a mentor, a man nicknamed Troff (who he won’t identify), what to do. “He sensed I was struggling with the environment at work. I remember saying to him, ‘There is stuff going on and I don’t know what to do.’ And he just looked at me and said, ‘Dennis, if you went into the system, could you find it?’ I said, ‘Well, I probably could’ and he said, ‘Well, you’ve got no choice.’

“I’ll never forget it. It was the end of the day and he picked up his jacket and he walked out.

“Before hearing those words there was fog and uncertainty. He provided absolute clarity. From that point on, I went into autopilot and I believe I have been on autopilot ever since.”

Timely contribution

With the banking system again beset by scandals, and as regulators such as ASIC’s Greg Medcraft are demanding bank boards and executives stop trying to shirk responsibility for misdeeds by arguing they are the work of a few bad apples, the book is a timely contribution.

Gentilin’s focuses on the behavioural underpinnings of wrongdoing and argues that the focus on compliance sometimes comes at a cost of building an ethical culture.

He says leaders have to create a dynamic within their teams and their organisations which people, regardless of their standing in the team or how long they’ve been there or their reputation or status, feel comfortable challenging. And when they do challenge, they must be listened to and respected and feel their concerns are appropriately addressed. “And that’s really a big part of leadership,” he says, “because speaking truth to authority is really difficult.

“So leaders have to display incredible humility and realise they need their people to challenge them and allow their followers to be leaders. They need to create an environment where the so-called difficult conversation becomes part of the normal discourse.”

He says that in many organisations leaders can be centres of influence and create monocultures. “If an organisation wants to change its culture, it has to find out two things: who are the role models of an organisation’s values and who do you go to when you’ve got a problem to solve?”

If those two populations of people overlap, that’s a good thing. “You could have someone who’s powerful in a particular unit because they’re making lots of money or they control certain types of information. So you’ve got to constantly monitor it and try to be aware of who they are, and make sure you’ve got the right people in those positions. And if you don’t, are you coaching them?”

“Then it’s a classic case of, if you can’t change the people, change the people.”

Honourable profession

Gentilin believes there is a core problem at the heart of the banking industry that has not been addressed. “You could say that, ultimately, what happened was they lost sight of a virtuous purpose. Thirty or 40 years ago, being a banker was considered an honourable profession. Bankers were very committed and connected to the customers and the communities that they served. And for a variety of reasons that changed.



“Banking became more a profession where people would join and rather than making a contribution to the greater good and giving of themselves, they’d join banking to give to themselves and used it as an opportunity to become wealthy quickly. And whenever you crack an environment where there’s a group of people who are very self-centred, and they’re there to serve themselves rather than serve others and give of themselves, then that’s a pretty

toxic environment for unethical conduct.



“And this is a challenge for banking now: how do they recreate that sense of contribution, where they’re there to give to the customer and community rather than just give to themselves? It’s up to leaders through their actions, to create an environment where people feel connected to that purpose. Because it’s good not just for ethics, it’s good for performance.”

Whistleblower protection needs to begin at organisational level

Dennis Gentilin
The Australian
24 February 2017, p. 27

RECENT INCIDENTS have only served to reinforce the far from ideal stereotype that surrounds whistleblowers — the brave (perhaps foolish) individual who, under extraordinarily difficult circumstances, lifts the lid on scandalous conduct and pays dearly for their selflessness.

Fortunately these outcomes, although inexcusable, are acting as a catalyst for change.

Last November a parliamentary inquiry into whistleblower protection was launched. The findings will inform changes to existing legislation in Australia which, to say the least, is deficient.

This being said, we must also accept that there is no such thing as a fool-proof legislative framework. Whistleblower protection is a complex topic. Every situation, and every whistle-

blower, is unique and no legislation, no matter how well crafted, can be expected to be universally effective.

However, to increase the chance of being effective, legislation must begin by addressing why whistleblowing does not always work.

Although gaps in our knowledge still exist, the large body of research into whistleblowing provides some clues into how this can be achieved. A prominent theme in the research is that positive results are far more likely to occur in organisations that promote, embrace and support those who speak up.

So legislation must, first and foremost, place the onus on organisations to create environments that are supportive of whistleblowing. And this requires far more than a formal whistleblowing program.

Organisations must have mechanisms in place that monitor their employees' attitudes towards whistleblowing. When these mechanisms identify that there is an aversion to speaking up, they must demonstrate they are responding appropriately.

No doubt financial rewards for whistleblowers will be a topic that features prominently in the submissions to the inquiry.

The bounty system recently introduced in the US that provides the Securities and Exchange Commission with the ability to issue rewards to whistleblowers is often cited to provide evidence for the efficacy of financial rewards. Personally, I remain circumspect.

The primary purpose of the US bounty system is not to provide whistleblowers with protection *per se*.

Rather, it aims to encourage people with information to come forward, thus increasing the quality of the information obtained. Based on this measure alone, an argument could be made that the bounty system has been a success. The number of disclosures made to the SEC since the program's inception has grown significantly.

However, if one looks beneath these headline numbers, a murkier picture emerges.

Although the SEC does not publish the proportion of disclosures that progress to investigations, there is evidence suggesting that many meritless claims are being made.

As many of the scandals that whistleblowers have exposed demonstrate, the use of lucrative economic incentives can drive adverse outcomes. Whistleblower hotlines are not immune to this.

If our primary goal is whistleblower protection, then a more effective approach would be to provide whistleblowers with some type of financial safety net.



As we know, in the worst case scenarios, the costs of whistleblowing, both emotional and financial, are enormous. Loss of employment, impaired career prospects, legal fees, repercussions for mental and physical health, and, at the extreme, family breakdowns, are all issues that whistleblowers have had to contend with.

In scenarios where organisations have failed a whistleblower, then it is only proper that they should appropriately compensate them.

The compensation should cover all costs incurred by the whistleblower be they direct, indirect, in the present or future.

Among other things this could incorporate loss of income, medical fees, legal fees and any costs associated with forced relocation (be it due to threats to personal safety or seeking to improve employment prospects).

As mentioned, the overarching objective of this type of legislative approach must be to encourage organisations to create the conditions that value and support whistleblowing. This is how we can best address the

root causes of inferior whistleblowing outcomes.

Organisations that ostracise, shun and chastise those who speak up not only make life difficult for whistleblowers, but are far more likely to venture down the slippery slope of ethical failure.

Dennis Gentilin is the author of *The Origins of Ethical Failures*. In 2004, he was a whistleblower in the FX trading scandal that rocked National Australia Bank. He left NAB in 2016 and is now founding director of Human Systems Advisory.

10 ways movements can encourage and support whistleblowers

Anthony Kelly

Waging Nonviolence, 23 March 2017

WHISTLEBLOWERS from within institutions, corporations, government departments, police or military can be critical to movement success, and their testimony is often the key to exposing and resisting injustice and creating change.

Institutions clamp down on and deter whistleblowing for good reason. Whistleblowers can shake major institutions. They can feed vital information to movements, can warn activists about impending threats, can expose corruption, public health dangers and reduce the power of governments and deep state agencies. Disclosing secrets and releasing information poses high risks and personal costs and always takes a fair degree of courage. To expose an injustice, whistleblowers will have to trust who they are communicating with.

Nonviolent politics has long recognized that societal institutions, even rigid hierarchies such as the police or military, are not monolithic, but are in fact riddled with dissent. Institutions are made up of individual human beings. Despite well-developed cultural, legal and bureaucratic mechanisms used to enforce internal obedience and discipline, whistleblowing and other forms of internal resistance are surprisingly common.

So, what can activists, organizers and movements do to encourage and support whistleblowers?

1. Don't alienate them.

Avoid generalized public statements that are likely to deter whistleblowers from approaching you. Saying things like "All cops are bastards" or "Everyone who works for Exxon should be charged with crimes against humanity" are likely to dissuade potential whistleblowers from contacting you. If the activist group or movement is perceived to be hostile, violent, unorganized or antagonistic then being approached by a whistleblower is far less likely. Targeting critiques toward management, government leaders or the decision-makers and not ordinary workers or the rank and file makes an approach more likely.

2. Send out invitations.

Publicly address and encourage people within the institution to blow the whistle on unjust or illegal practices. Talk about "people of conscience" within the institution. Actively and openly call upon people of courage and conviction within the ranks to tell their story. At rallies and public events engage with staff or rank-and-file workers to demonstrate that you are not hostile to them as individuals.



3. Communicate your support.

Use leaflets, speeches, union newsletters, social media and statements to the mainstream media to show that you or the movement can be trusted to support and protect whistleblowers. Let them know that you are open to hearing from them. Don't make promises you can't keep but offer support when and where you can.

4. Create and promote avenues for interaction.

Develop or utilize secure anonymous document drop links that you actively

monitor. SecureDrop is one open-source whistleblower submission system that media organizations can use to securely accept documents from and communicate with anonymous sources. It was originally created by the late Aaron Swartz and is currently managed by Freedom of the Press Foundation.

Develop activities or events that encourage interaction between the movement and staff. Organize a BBQ or dinner for staff, a public meeting for workers where they can hear about the movement. In Australia at Roxby Downs, anti-uranium activists held public meetings in the township to listen to the concerns of mine workers and their families. During the Vietnam War peace activists and veteran groups set up G.I. Coffee Houses near military bases. The principle is the same: Positive interaction generates trust and encourages internal dissent.

5. Prioritize and actively engage with any contacts.

Potential whistleblowers will often put out subtle "feelers" long before disclosing who they are or before releasing any information. They are seeking trusted contacts and testing you out. How activists respond to these initial contacts can be critical. Be open to communication that may appear suspicious at first or from dubious or anonymous sources. The general rule is to be respectful and courteous to all contacts as any one of them could end up being a critically important whistleblower.

6. Ensure confidentiality.

If a potential whistleblower does make contact with you and identifies themselves in some way, make it a priority and do everything possible to ensure confidentiality. Drop other work if you need to in order to engage with them.

7. Conduct a risk assessment.

The risks for a whistleblower increase dramatically once they have made contact or gone public. Discuss with them what their fears and concerns are and help them conduct a risk assessment, which is essentially listing, discussing and then evaluating each identified risk. Seek out legal support for them that is capable of advising and advocating for them in the case of

legal sanctions. Whistleblowers may be breaking contracts, agreements, regulations and laws in order to make information public. Form a small and capable support team around the whistleblower.

The decision to go to the media needs to be considered carefully and the whistleblower should be supported to make the best and safest decision for them as they will bear the vast bulk of any consequences. Having a high profile in the media can be a risk but can also lead to additional safety.

If the decision is made to go to the media, choose the most experienced journalist in the most reputable media outlet available. Take the time to find the right one. Professional journalists who adhere to professional ethics should protect sources and may be able to work with you on making information go public safely. But not all journalists will act ethically and will also have their own interests in breaking a story. You can act as a go-between at the early stages to reduce the risks for the whistleblower.

8. Share resources for whistleblowers

Provide them with a copy of *The Whistleblower's Handbook: How to Be an Effective Resister* by Brian Martin. It is out of print but available online. Based upon hundreds of interviews with whistleblowers, this book provides insights, lessons and important advice for people considering blowing the whistle in the public interest.

9. Be ready to provide protection.

Work with your networks or activist group to provide as much support, security or protection as possible. In some cases this may mean making sure someone trusted is with them 24 hours a day for a while. This form of "protective accompaniment" would mean creating a roster to have trusted people stay with the person and a protocol to alert more support if there is a threat or incident.

10. Prepare to give ongoing support.

Whistleblowers are often risking their safety, careers, incomes and reputations when deciding to release information on corruption or injustice. They will face damaging personal attacks and harassment, traumatic and long

legal battles and possibly imprisonment. They deserve the ongoing and long-term support of the movement. Some movements have set up ongoing support groups for whistleblowers that raise funds and generate public and political support.



The Chelsea Manning Support Network operated for seven years and was able to cover 100 percent of Chelsea Manning’s legal fees throughout her court martial — nearly \$400,000 — and mount a huge publicity campaign to raise awareness about her situation. Other groups like the Courage Foundation support several “truth-tellers” internationally, and fundraise for the legal and public defense of specific individuals who risk life or liberty to make significant contributions to the historical record and are subject to serious prosecution or persecution. The more support existing whistleblowers receive, the more likely others will follow.

Whistleblowing poses a serious threat to power, privilege and the continuation of anti-democratic or authoritarian practices. Our movements grow stronger when we support them. Every bit of encouragement, support and protection you can provide is worth it.

Anthony Kelly is an activist and trainer based in Melbourne, Australia who works on campaigns against racialised policing and for police accountability.

Comment 1: Justice Interruptus

In search of Chelsea Manning Support Network fiscal accountability: During the court-martial phase, Chelsea Manning Defense Fund (CMDf) received \$1,530,009 from 25K donors yet paid only \$391,626 in legal fees plus Interest on Lawyer Trust Accounts (IOLTA). Somehow CMDf

managed to spend \$1,138,383 (a stunning 74.4%) on things other than PFC Manning’s legal fees. In the appeals phase, CMDf at last report had received \$432,267 and paid \$368,048 in legal fees plus IOLTA. That proportion (85.1%) is much better than the court-martial phase (25.6%), but remains problematical because CMDf has not publicly updated accounting to include the final 12 months of its operation. Considering the virtues of transparency many supporters associate with Chelsea Manning, CMDf’s failure to fully disclose what happened to the total \$1,962,276 (plus untold thousands since February 2016) donated to CMDf reflects badly on Chelsea Manning Support Network, fiscal manager Courage to Resist, umbrella sponsor Alliance for Global Justice, and most regrettably on Chelsea Manning herself—who is of course in no way responsible for whatever shenanigans CMDf has been up to in her name, and deserves better.

Comment 2: Brian Martin

Thanks Anthony for presenting excellent advice for how movements can support whistleblowers. To this I would add a few points.

1. When possible, I now recommend to whistleblowers that they remain anonymous, and feed information to the media or action groups. This reduces the risk of reprisals, and the whistleblowers can remain on the job, collect more information and leak again and again.

2. Movements can help potential whistleblowers to develop skills, such as telling their story succinctly, understanding media operations, finding allies, and staying on message. Many employees do not have the sorts of knowledge and skills that activists take for granted.

3. Movements can liaise with whistleblower support organisations, for example Whistleblowers Australia or, in the US, the Government Accountability Project. These support groups hear from numerous whistleblowers and can put them in touch with relevant movements.

4. There is a new edition of my book *The Whistleblower’s Handbook*, now entitled *Whistleblowing: A Practical Guide*. It is available for sale

and is a free download at <http://www.bmartin.cc/pubs/13wb.html>

Xnet’s anti-corruption whistleblowing platform

Xnet-news, 20 January 2017

XNET, an activist project which has been working on and for networked democracy and digital rights since 2008, launches in the Barcelona City Hall the first public Anti-Corruption Complaint Box using anonymity protection technology like Tor and GlobaLeaks (“Bústia Ètica” in Catalan).

With this pioneering project, the Barcelona City Hall is the first municipal government to invite citizens to use tools which enable them to send information in a way that is secure, that guarantees privacy and gives citizens the option to be totally anonymous.

Xnet, as part of the Citizens’ Advisory Council of the Barcelona City Office for Transparency and Best Practices, launches this Anti-Corruption Complaint Box highlighting the following features:

- This digital device, and how to use the new facility managed by the Barcelona City Hall, is inspired by similar mechanisms already operating in civil society (for example, the XnetLeaks mailbox), and implemented with advice from members of Xnet who have also set up a working relationship with the GlobaLeaks platform.

- The debate on what anonymity entails is one of the most up-to-date and relevant themes of the digital age, especially in the wake of Edward Snowden’s revelations and, accordingly, we explain why Xnet has insisted on the need to guarantee true anonymity in a project like the Barcelona City Anti-Corruption Complaint Box which combats corruption and other damaging practices that threaten good governance in the city of Barcelona.

- Xnet provides for journalists and citizens a FAQ service regarding the Box, explaining how it works, describing tools (for example Tor) which guarantee anonymity, and all the details relative to the first project of this type whose use is recommended by public institutions, and explains

how this can be done.

Xnet has always espoused the idea that democracy can only exist if institutions work together in equal conditions with aware, well-organised citizens. The Box aims to provide a way to make this kind of teamwork possible. Corruption can't be eliminated by institutions scrutinising themselves. Civil society must play a central, continuous role.

More info: <https://xnet-x.net/en/whistleblowing-platform-barcelona-city-council/>

Xnet: <https://xnet-x.net/>

South Korea's whistleblowers sound off at their own risk

Choe Sang-Hun

New York Times, 7 November 2016



Lee Hae-gwan. Photo: Jean Chung

SEOUL, SOUTH KOREA — Five years ago, South Koreans began calling a number in Britain in droves. They were trying to sway an international phone poll to name Jeju Island in South Korea — a verdant spur of volcanic rock famous for its fresh air and succulent seafood — one of the “new seven wonders of nature.”

South Koreans, from then-President Lee Myung-bak to schoolchildren, pitched in. On Jeju Island alone, government officials voted up to two million times a day on their office phones, generating \$20.3 million in phone bills.

But Lee Hae-gwan smelled something fishy. Mr. Lee, a union leader at South Korea's main telephone company, heard from fellow workers that their employer was handling the calls locally, even as it charged South Koreans millions for calling Britain.

Mr. Lee blew the whistle — and paid for it. Over the last four years he has endured a suspension, a transfer, a pay cut and being fired. All, he says, were the result of his whistleblowing.

His plight — which ended only this year, when he won his job back — demonstrates why South Korea is having trouble getting inside executives and officials to call out wrongdoing, despite a broader push to uproot corruption.

“I would do it again,” Mr. Lee said. “But if my children or friends ask me what to do in the same situation, I would not encourage them to do as I did. You pay too big a price.”

Corruption is becoming a pressing issue in South Korea as economic growth slows and its people begin to demand higher standards from their leaders and big companies. After a string of corruption scandals that implicated prosecutors and judges, opposition parties are calling for the establishment of an independent agency to investigate graft among senior public servants.

A new law went into effect in September that, among other things, bans public servants, schoolteachers and journalists from getting free meals worth more than \$27 to prevent conflicts of interest. Meanwhile, prosecutors are increasingly examining the conduct of corporate executives.

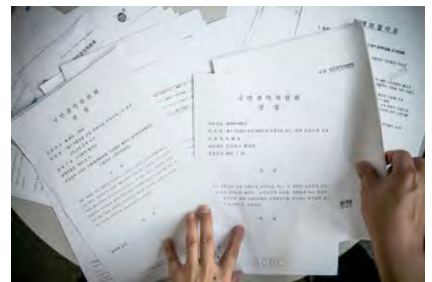
Crucial to those efforts, say supporters, is empowering whistleblowers. Already the government encourages tattling by camera-toting bounty hunters who collect evidence of petty crimes as well as serious infractions like bribery. The Horuragi Foundation, a civic group, and others are lobbying Parliament to extend coverage from current whistleblower protection laws, which are not as broad as in the United States and elsewhere.

But the groups expect progress to be slow because of broad political gridlock as well as entrenched attitudes toward whistleblowers, especially among government officials and corporate executives.

“They do whatever it takes to find an excuse to expel whistleblowers,” said Lee Young-kee, a lawyer who heads the Horuragi Foundation.

South Korea's past military dictatorship spawned a rigidly hierarchical office culture that made whistleblow-

ing difficult. With “loyalty to the organization” upheld as a key value, whistleblowing was seen as an act of betrayal. Rules were routinely ignored in the name of meeting management goals, but few spoke out against colleagues because life in the office revolved around hometown, family and school connections, reinforced through nepotism and late-night wining and dining.



Mr. Lee shows the documents from a government anticorruption commission back in 2012, when he shared his misgivings with a local TV station and the panel. Photo: Jean Chung

In its 2013 survey of 42 whistleblowers, the Horuragi Foundation found that 60 percent were fired after exposing corruption in their organizations. Whistleblowers reported financial straits, divorces and suicidal impulses as they were ostracized by their colleagues and harassed with defamation and other lawsuits from managers.

In 1992, in one of the first cases of whistleblowing in a democratized South Korea, an army lieutenant revealed vote-rigging within the military barracks during parliamentary elections. He was demoted to private and dishonorably discharged. In 2003, when four Red Cross officials revealed that their group shipped blood tainted with AIDS, hepatitis and malaria viruses to hospitals, the Red Cross reprimanded them for “disorderly behavior.”

In 2008, because of whistleblowing by Kim Yong-chul, a former legal counsel of Samsung, South Korea's largest conglomerate, investigators uncovered 4.5 trillion won (\$4 billion) that its chairman, Lee Kun-hee, kept hidden under his aides' names, and convicted him of tax evasion. Samsung vilified Mr. Kim as an untrustworthy former employee. Mr. Kim later wrote a book about the company.

When Lee Hae-gwan blew the whistle on the Jeju Island situation in

early 2012, he was taking on a popular cause. At the time, he was a midlevel marketing staff member at KT Corporation, South Korea's largest telecom company.

Kim Yoon-ok, South Korea's first lady, was appointed as honorary chairwoman for a national committee supporting Jeju's bid. The National Assembly adopted a unanimous resolution supporting the effort. Local campaigners encouraged people to vote as many times as they could, offering them free Hyundai and Kia cars via a lottery. Citizens, including children with their piggy banks, donated \$5 million to help finance the telephone voting.

It worked: The poll sponsor, a Swiss foundation called New7Wonders, named Jeju Island one of the new seven wonders of nature.

But Mr. Lee and other workers wondered how KT's lines could handle that volume of international calls, as well as how the fees from the phone calls might be divided between the phone company and New7Wonders.

In early 2012, he shared his misgivings with a local TV station and a government anticorruption commission. Authorities later fined KT less than \$3,200, but the company also donated \$4.1 million to help Jeju Island pay its phone bill.

Eamonn Fitzgerald, spokesman for New7Wonders, said his group took "a small portion" of the telephone fee paid by each voter and collected fees from corporate sponsors in the places competing for the title. Mr. Fitzgerald declined to say how many votes Jeju ultimately received, and the Jeju government declined to comment.

The furor died, but Mr. Lee began to feel rising pressure from his employer. First KT suspended him for two months. It then transferred him out of Seoul. In his new post, he was shunned by colleagues.

In late 2012, KT fired him, citing factors like taking sick leave without permission.

In February, South Korea's top court affirmed an earlier decision that Mr. Lee's punishments were a pretext and that he should be reinstated. But KT was not done with him.

In March, he was punished with a month's pay cut for the same reasons it had fired him in 2012. In a statement,

KT said its action was justified and was not a reprisal for whistleblowing. It has since rescinded the pay cut without explanation.

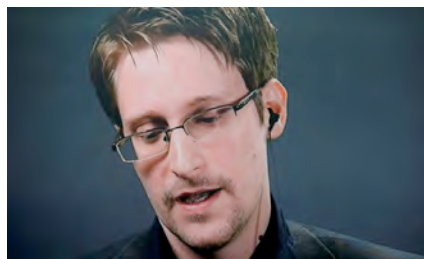
Mr. Lee cited what many workers in South Korea call "the bitter taste of organization." "I blew the whistle expecting KT to apologize, fix the problem and move on," he says. "How naïve I was."

Government advisers accused of "full-frontal attack" on whistleblowers

**Outcry follows plans to radically
increase prison terms for revealing
state secrets and to prosecute
journalists**

Rob Evans, Ian Cobain
and Nicola Slawson

The Guardian, 13 February 2017



One critic said the proposed changes were "squarely aimed at the *Guardian* and Edward Snowden," pictured.

Photo: Brendan Mcdermid/Reuters

THE BRITISH government's legal advisers have been accused of launching a "full-frontal attack" on whistleblowers over proposals to radically increase prison sentences for revealing state secrets and prosecute journalists.

Downing Street believes a major overhaul of existing secrecy legislation is necessary because it has become outdated in a digital age when government employees can easily disclose vast amounts of sensitive information.

Draft recommendations from the legal advisers say the maximum prison sentence for leakers should be raised, potentially from two to 14 years, and the definition of espionage should be expanded to include obtaining sensitive information, as well as passing it on.



The moves have prompted concern from whistleblowers that draconian punishments could further discourage officials from coming forward in the public interest. One critic said the changes were "squarely aimed at the *Guardian* and Edward Snowden."

Meanwhile, media organisations and civil rights groups have expressed alarm at the Law Commission's assertion that they were consulted over the plans, when they say no substantial discussions took place.

The *Guardian*, human rights group Liberty and campaign body Open Rights Group are among a series of organisations listed by the Law Commission as having been consulted on the draft proposals, but all three say they were not meaningfully involved in the process.

The Law Commission says on its website that in making the proposals, it "met extensively with and sought the views of government departments, lawyers, human rights NGOs and the media." The law commissioner, Prof David Ormerod QC, said: "We've scrutinised the law and consulted widely with ... media and human rights organisations."

But Liberty said that while a meeting was held, it was "not on the understanding that this was a consultation." A source said: "Liberty do not consider themselves to have been properly consulted. And we will be responding in detail to the [public] consultation."

Cathy James, the chief executive of Public Concern at Work, was also surprised to see her whistleblowing charity listed as being involved.

She said: "I didn't actually know we were listed in the document as we have been working our way through it so it is a big surprise to me. I believe my colleague met with them initially but we were not consulted in the normal sense of the word consultation. That is

not what happened.

“We are very worried about the extent of the provision in the recommendations both for whistleblowers and public officials. It’s a huge backward step and we are very worried.”

Jim Killock, the chief executive of Open Rights Group, confirmed it had not taken part in the consultation. “The real tragedy of this is that they’ve had nine months to actually talk to journalists and civil liberty organisations, and find out what the consequences of their suggestions might be, and in actual fact they’ve managed to talk to no one. But they’ve listed us all as having being consulted in the paper anyway,” he said.

The *Guardian* also held only one preliminary meeting with the government’s legal advisers and was not consulted before being listed in the report. A spokesperson said: “The proposals to threaten journalists and whistleblowers with draconian punishment, combined with powers just introduced in the [2016] Investigatory Powers Act to surveil journalists without their knowledge, represent a further attack on freedom of expression.

“We are surprised that a roundtable discussion with the Law Commission, which they billed as a ‘general chat’, has been described as formal consultation, and concerned that despite being told that we would be informed about the progress of these plans, the first we knew about them was when the law commissioner put pen to paper in the *Daily Telegraph* last week.”

Killock said: “This is a full-frontal attack, recommending criminalising even examining secret services’ material. The intention is to stop the public from ever knowing that any secret agency has ever broken the law.

“It’s squarely aimed at the *Guardian* and Edward Snowden. They want to make it a criminal offence for journalists to handle a large volume of documents in the way that journalists did with Snowden. They have even recommended that foreigners be criminalised for this, meaning Snowden would be prosecutable in the UK.”

Killock expressed his concern over a proposed “redrafted offence” of espionage that would “be capable of being committed by someone who not only communicates information, but also by someone who obtains or

gathers it.”

“It’s the mere handling of documents that becomes a criminal offence on the basis of the risk handling those documents causes, not that you actually hand them to a foreign state,” he said. “So spying becomes possession of secret information. This is not what any of us would recognise as the definition of spying. It’s spying as China might define it.”

The former *Guardian* editor Alan Rusbridger said the proposed changes were “alarming” and had been set out “without any adequate consultation.”

When asked about the organisations listed as being consulted, a spokesman for the Law Commission said: “Ahead of our open public consultation, we undertook a fact-finding exercise where we contacted a range of organisations with an interest in the area.

“We met with a number of interested groups over the last 12 months. They are listed in the appendix to the report. All were either met with or contacted by phone. Everyone listed in the appendix provided views that we feel we have considered in the consultation paper.”

On Friday, a Law Commission spokesman told technology website *The Register* there were delays to the consultation because the project “became a larger piece of work than we anticipated.”



Ben Griffin

Ben Griffin, who quit the SAS over the abuse of prisoners in Iraq and later turned whistleblower to expose what he had witnessed, said: “The British government not only refuses to answer

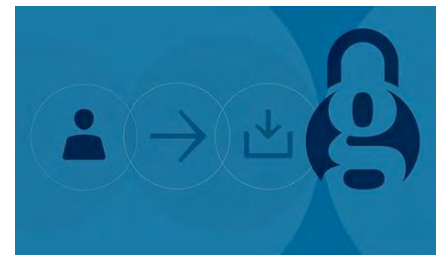
questions [about conflicts in the Middle East and North Africa], it is actively misleading the public. Given these facts, it is of no surprise that they have decided to clamp down on whistleblowers.”

Another whistleblower, Peter Francis, made a series of revelations about a Scotland Yard undercover unit that spied on hundreds of political groups. Francis, who was deployed as an undercover police officer to infiltrate anti-racist groups in the 1990s, disclosed, for example, how police gathered information about the family of the murdered teenager Stephen Lawrence.

“I have been threatened, several times, with possible prosecution under the (1989) Official Secrets Act. Not a single suggestion, within the entire 326 pages [of the] Law Commission document, gives me any hope whatsoever that as a whistleblower, I would then be treated any more fairly with this new law in place,” he said.

“In fact to the contrary, all that would now happen is that I would have to be prepared to serve 14 years’ imprisonment instead of currently two, which I personally am, but [it] might deter other officers from coming forward in the future.”

He said he also disagreed with another of the Law Commission’s proposals suggesting that defendants should be prevented from claiming they believed they were acting in the public interest disclosing official secrets.



According to the Law Commission, “such a defence would allow someone to disclose information with potentially very damaging consequences. The person making the unauthorised disclosure is not best placed to make decisions about national security and the public interest.”

The proposals are contained in a 326-page report commissioned in 2015 by the Cabinet Office, which asked for a review of the “effectiveness of the

criminal law provisions that protect government information from unauthorised disclosure.”

According to the Law Commission, “the maximum sentence for the offences in the Official Secrets Act 1989 is low when compared with offences that exist in other jurisdictions that criminalise similar forms of wrongdoing.”

In a pointed reference, it noted that the maximum sentence for whistleblowers in Canada is 14 years. The commission says the two-year sentence currently applicable in the UK did not reflect the damage that could be done to the country.

“In the digital age, the volume of information that can be disclosed without authorisation is much greater than when the Official Secrets Act 1989 was originally drafted. It could be argued that this means that the ability to cause damage to the national interest and the risk of such damage occurring has also increased,” the Law Commission said.

Michelle Stanistreet, the general secretary of the National Union of Journalists, said: “The scope for change is huge, wide-ranging and possibly detrimental. We are concerned at the ramifications for journalists and press freedom as a consequence. We have already faced many challenges and attacks on our right to report in the last few years. Could this be intended as another step taken to curtail the media in the UK?”

A Law Commission spokesman told the *Guardian*: “We are currently conducting an open public consultation on the protection of official data, including the Official Secrets Acts.

“We are seeking views on how the law could meet 21st-century challenges while also ensuring people don’t inadvertently commit serious offences. Our provisional proposals make a number of suggestions to improve the current laws around the protection of official data, and we welcome views.”

Additional reporting by Owen Bowcott

The tools helping facilitate leaks from Trump’s White House

Justina Crabtree
CNBC.com, 9 February 2017



Photo: Pete Marovich

AS FAR AS leaks out of new U.S. President Donald Trump’s administration go, the saying “when it rains, it pours,” might be appropriate.

Last week alone, potentially embarrassing details concerning telephone calls with the Australian Prime Minister and Mexican President, as well as allegations that Trump’s Supreme Court nomination process was being stage managed, saw the cold light of day.

Since the tempestuous U.S. election cycle last year, demand for SecureDrop, one of the primary encryption platforms employed by news outlets to securely facilitate leaks has “absolutely exploded,” according to Trevor Timm, executive director of the Freedom of the Press Foundation which is behind the tool.



SECUREDROP

“It’s hard to name a news organization that has not gotten in touch with us about installing SecureDrop in the past six weeks,” Timm told CNBC via e-mail.

The platform, used by the *New York Times* and the *Washington Post* among others, is currently subject of the *Guardian*’s pinned tweet and has been

adopted by national broadcasters in Canada and Norway.

SecureDrop’s growing popularity is representative of a sea change in the media industry, with leak-based and investigative journalism being foregrounded.

Timm described how “the Trump administration has been leaking at a record pace” and “media organizations are much more willing to actually call lies ‘lies’.”

By way of explaining the spike in interest in SecureDrop, Timm outlined his view that there was a “general fear that Trump could turn the U.S.’ surveillance on the press,” alongside unrest bubbling away within the government itself.

According to Timm, SecureDrop faces little other competition in the U.S. The tool is open source, though he detailed that the Freedom of the Press Foundation did “sign large news organizations who can afford it up to support contracts.”

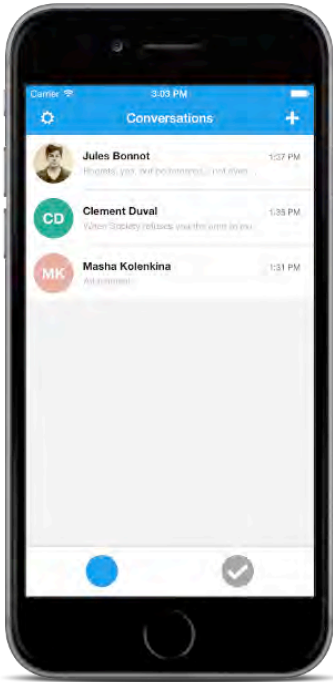
Another encryption platform that has seen its popularity jump is Signal, a messaging app which facilitates communication shielded by end-to-end encryption. BuzzFeed and other media outlets reported in early December that daily downloads of the app had increased 400 percent since the U.S. election.

Moxie Marlinspike, founder of Open Whisper Systems which is behind the platform, told CNBC via e-mail that: “The U.S. surveillance infrastructure expanded greatly under Obama, and there are many people who feel uncomfortable or at risk with Trump inheriting control over the largest, most invasive, least accountable surveillance apparatus in history.”

Marlinspike did point out that the Trump transition team also used Signal. Like SecureDrop, the software is open source and Marlinspike hoped that such practice would “ideally ... just become the new normal.” Google, Facebook and its subsidiary Whatsapp also moved to adopt end-to-end encryption last year.

But for Tom Felle, a lecturer in digital journalism at City University in London, the pick up in encryption software is nothing new, and is instead a “trend that has been building in the last eight to nine years” as journalists need to “protect sources and whistle-

blowers in the digital era.”



Commenting on the rocky relationship between the media and the new Trump administration, Felle did add that there was a “worry in newsrooms as to how to cover fake news.” He said that while there were “no grave investigations into Trump as yet,” the proliferation of leaks coming out of the new government was “an early example of what will be an interesting four years.”

Nonetheless, the media’s mass employment of encryption software may well contribute to this.

Timm asserted that, “I don’t think it’s impossible that a combination of leaks, and whistleblowers and investigative journalism eventually lead to the downfall of Trump.”



The Trump administration may get away with violating scientific integrity policy. But it’s not immune to whistleblowers

Zoë Schlanger
Quartz, 26 January 2017

THE TRUMP administration plans to vet science coming out of the US Environmental Protection Agency before it can be released to the public, including data on climate change, the Associated Press reported Wednesday.

“Everything is subject to review,” Doug Ericksen, a spokesperson for Trump’s EPA transition team, told the AP.

Members of the Trump administration — though it is not clear who — are reviewing existing scientific papers and data produced by EPA scientists, to decide what can be released to the public. Erickson initially told the AP that all new research would be scrutinized as well, but later walked back that statement to say the new research was on “temporary hold” along with new press releases, which have been blocked since Monday. It is not clear if the Trump administration will alter or edit existing science before re-releasing it.

This may be in violation of the EPA’s own scientific integrity policy, in place since 2012, which admonishes political tampering of any kind. “To operate an effective science and regulatory agency like the EPA, it is also essential that political or other officials not suppress or alter scientific findings,” the policy reads.

But this policy effectively has no teeth; there are no clear legal consequences of violating it, FiveThirtyEight points out. Scientific integrity policies — now in place at 26 federal agencies — “can be ignored; they can be removed by the administration or by an agency,” Andrew Rosenberg, of the advocacy group Union of Concerned Scientists, told FiveThirtyEight. Even during the Obama administration, how thoroughly the policies were enforced was murky. For example, *Nature* points out that in 2011, Obama instructed the EPA to create a proposal for stricter ozone regulation, but told

the agency to rescind the plan, citing the cost of implementation during the recession. That block was temporary, however, and the EPA approved stronger ozone standards in 2015.

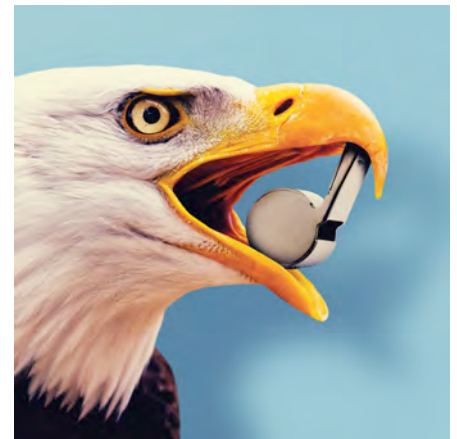
There another legal option for federal employees who feel science is being suppressed: US whistleblower laws. No agency can impose policies barring federal employees’ communication with the public unless they also inform employees of their right to act as whistleblowers, TPM points out.

The US Office of Special Counsel, an agency mandated to protect federal whistleblowers, released a statement Wednesday reminding employees of that provision.

“Under the anti-gag provision, agencies cannot impose nondisclosure agreements and policies that fail to include required language that informs employees that their statutory right to blow the whistle supersedes the terms and conditions of the nondisclosure agreement or policy,” the OSC press release said.

When it’s time to blow the whistle

Peter Van Buren
Sunday Review, 18 February 2017



“THE SPOTLIGHT has finally been put on the lowlife leakers! They will be caught!” So tweeted President Trump on Thursday morning after a week when his administration had been shaken by reports based on information from anonymous sources inside the government and intelligence agencies. On Monday, such revelations had led to the resignation of Michael T. Flynn, the national security adviser.

Further reports about repeated contacts between members of the Trump campaign team and Russian officials also caused the president to reverse his pre-election stance — “I love WikiLeaks!” — and issue tirades against “illegal” leaks and the “criminal action” of leakers. It’s no surprise that Mr. Trump, in office, wants to stem this flow with threatened retaliation, but if you’re a government employee who knows something, what are you thinking?

To leak or not to leak? Will you blow the whistle and expose wrongdoing?



Peter Van Buren

I know something about the decision you’re weighing. With 21 years of service at the State Department as a foreign service officer, I was assigned to wartime Iraq from 2009 to 2010 to manage two provincial reconstruction teams. Their purpose was to help rebuild the country, in hopes that the young men then joining the insurgency would cease fighting and discover that they had a stake in a Pax Americana.

It was a difficult task, perhaps naïvely optimistic from the start. I quickly learned that despite the good intentions, the extraordinary amount of money spent and the importance of the project, it was not well thought out.

My orders from Washington were to nurture entrepreneurs among rural women whose husbands would not allow them to leave home. So we handed out money for people to open bakeries on streets that lacked running water and electricity. There was the chicken-processing plant we helped establish that threatened to disrupt a food chain that had served the region for hundreds of years. A short-term

giveaway of animal vaccines ended by driving up their prices beyond the means of local farmers after my team had moved on.

This sounds almost comical now: my boss directed me to fund a theatrical production intended to persuade warring Sunnis and Shiites to stop killing one another. An Off Broadway show was not going to fix the sectarianism running amok in Iraq.

In short, I saw a hemorrhaging of American taxpayers’ money on propaganda when the Iraqis lacked basic health care, clean water and other essentials that we could have provided but did not. I felt the way I imagine civil servants today do: the country I loved serving wasn’t living up to its ideals.

It’s hard to pin down the exact moment, but at some point, the program’s flaws exceeded what in good conscience I could participate in. But the system did not want to hear constructive criticism.

I spoke with my boss in Iraq. He told me to do what I was told; *his* boss said the same. When I took my concerns to the inspector general, I was advised that what I was witnessing was not fraud or waste, but policy. Back in Washington, no one at the State Department would meet with me. I went outside the department, but when I attended a semi-clandestine meeting with Senate staff members, I could see they had trouble believing me. My reporting was 180 degrees from what they had heard officially from both the Bush and Obama administrations.

I didn’t know any journalists, but I did know from years in Washington that a leaker usually trades anonymity for credibility. You keep some safety, perhaps, and your job, but since you can’t stand up in your own defense, you are attacked by officials as ego-driven, your information as false. Or “fake news,” as we hear today.

I also realized my story needed more explaining than would fit in a newspaper article anyway. So I decided to go public, via a book. I chose to become a whistleblower.

It’s risky. It’s saying, “Here I am, come after me.” But your motivations, too, are on display; you are more easily seen as a patriot than a partisan. And your presence encourages and empow-

ers others.

I followed protocol and submitted the manuscript of my book. The State Department cleared it for publication without question. I can account for this only by noting that it went through a system then in place to rubber-stamp memoirs by retired diplomats.



Then, one day, an advance copy landed in someone’s hands at State, and my professional life ended. My security clearance was suspended. I was interviewed repeatedly by security personnel who were clearly fishing for any excuse to fire me. My personal finances and years of travel vouchers were scrutinized in a quest to find evidence of fraud or illicit income. I was a government employee inside a bureaucracy with powers of investigation and punishment I previously had no clue even existed.

The State Department flirted with prosecuting me for disclosing classified data that no one ever seemed to be able to pinpoint in my book, and tried to dismiss me in part for a “lack of candor” when I refused to incriminate myself. In the end, the harassment pushed me into an unwanted early retirement.

Near the end, I asked one of the security officers why they were bothering. In a rare moment of candor, the officer said most of this wasn’t aimed at me. It was about the next person; it was about sending a message.

So why did I do it? For the same reasons you’re thinking you should.

Because we saw something wrong. Because our conscience told us we must. Because we believe the people have a right to know about their government, and sometimes only someone on the inside can tell them. Because we can contribute to a larger story or supply a missing puzzle piece. Above all, because our oath of service is to the Constitution, not to any leader or party, neither the one in, nor out, of power.

People of conscience, leakers and whistleblowers alike, we're made. If government acted as the founders believed it should, we would not be here. Mushrooms don't pop up on a dry lawn.

I made a choice to be a whistleblower. I'd do it again. You?

Peter Van Buren is the author of *We Meant Well: How I Helped Lose the Battle for the Hearts and Minds of the Iraqi People*.

New anonymous whistleblower tool launched by European Commission

Patrick Hubert and
Michael Vaz D'Almeida
AntitrustWatch, 24 March 2017



ON MARCH 16, 2017, the European Commission ("EC") introduced a new tool to make it easier for individuals to alert the EC about competition law violations, mainly secret cartels, while maintaining the anonymity of the whistleblowers.

The EC presented the objectives of the new tool (I) and how it works (II); this tool, which is not new in Europe, leaves several questions unanswered (III).

I. Objectives of the new tool

The EC reminded that, until now, most cartels have been detected through its leniency programme, which remains in place. With this new tool, the EC wants to encourage individuals, and not only companies, to report their suspicions of anticompetitive practices. According to the EC, the new tool complements the leniency programme by:

- increasing the likelihood of detection and thus deterring undertakings from entering or remaining in cartels or carrying out other types of illegal anti-competitive behaviour;
- contributing to the success, the celerity and the efficiency of EC's investigations; and
- improving the preciseness and reliability of the information in possession of the EC.

II. How does the new tool work?

The fundamental attribute of the new tool is its protection of anonymity. Indeed, the new tool is conceived as an online platform where any individual can insert any relevant information and send it to the EC through a specifically-designed encrypted messaging system.

The platform has been created by an external service provider — SecWay, a French company specialised in cyber security — which handles the platform as an intermediary. So, the EC does not monitor the platform itself. Concretely, SecWay relays only the content of received messages without forwarding any metadata that could be used to identify the individual providing the information.

The whistleblower can activate an option of requesting the EC to reply to its messages. The tool allows the EC to respond to the whistleblowers (without knowing who they are) in order to ask them to provide clarifications and details. Finally, at their discretion, the whistleblowers can disclose their identity by activating another option.

III. Even though the concept is not entirely new in Europe, the new whistleblower mechanism leaves several questions unanswered

The same anonymous whistleblowing concept is already implemented by the Bundeskartellamt in Germany (with a

very similar platform as the EC's but managed by a German company, Business Keeper AG), by the Competition Council in Romania and by the Competition and Consumer Authority in Denmark (with the same SecWay platform).

In the UK, the Competition and Markets Authority ("CMA") uses a similar tool to allow individuals to report cartels. However, the UK system does not provide for full anonymity. The whistleblower's identity is not disclosed to third parties but it is known by the CMA. Another difference is that the CMA can offer the whistleblowers a financial reward up to £100,000 (in exceptional circumstances).

The introduction of the new tool may indicate that the EC considers that there are a number of cartels that are not disclosed through its leniency programme. Several questions remain open at this stage.

The first one is how the EC will detect false denunciations made by people who are seeking to destabilise a company or to cause harm to individuals at a company. Assessing the accuracy of information received anonymously, through a third-party service provider, is more difficult than when the EC receives information in conversations conducted on a no-names basis (which is the current procedure). There is a real risk that the EC will launch unwarranted investigations on the back of information obtained through the new tool. The EC should be transparent and report regularly on the number of tip offs that it has received and how many informal and formal investigations it has opened based on such information. If the tool results in meaningless investigations, which often impose a heavy burden on the investigated companies, the EC should reassess the value of the tool, or consider compensating innocent companies for damage caused.

The second one is whether the EC will be able to include anonymous information in the files while remaining compliant with EU law defence rights.

The third one is whether, as it often happens, the EC innovation will encourage European national competition authorities to adopt the same kind of mechanism.

Whistleblowers Australia contacts

Postal address PO Box U129, Wollongong NSW 2500
Website <http://www.whistleblowers.org.au/>

Members of the national committee
http://www.bmartin.cc/dissent/contacts/au_wba/committee.html

New South Wales contact Cynthia Kardell,
phone 02 9484 6895, ckardell@iprimus.com.au

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

Queensland contact Feliks Perera, phone 07 5448 8218,
feliksfrommarcoola@gmail.com

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

Schools and teachers contact Robina Cosser,
robina@theteachersareblowingtheirwhistles.com



Whistle

Editor: Brian Martin, bmartin@uow.edu.au
Phones 02 4221 3763, 02 4228 7860
Address: PO Box U129, Wollongong NSW 2500
Associate editor: Don Eldridge
Thanks to Cynthia Kardell and Margaret Love for proofreading.

WBA conference and AGM

This year's conference will be on Saturday 18 November and the annual general meeting on the 19th. The venue will be the same as in recent years: Uniting Church Ministry Convention Centre on Masons Drive, North Parramatta, Sydney. Make your flight bookings now to reduce costs.

Low-cost quality accommodation is available at the convention centre. Book directly with and pay the venue. Call 1300 138 125 or email service@unitingvenues.org

Know success when you see it

(continued from page 2)

Curiously it might just be the jolt that you need to think twice about what you need as opposed to what you want to succeed.

This short piece doesn't go anywhere near questions about working out what best to do at the outset or a thousand other questions that make whistleblowing the messy business it is — and it can be a whole lot more messy if you don't know success even when it hits you in the eye — if you can't, see past wanting that public flogging. It helps if you can find a person, a mentor who might spot that opportunity when you can't.

There isn't any right way, of course, but for me I'm grateful for a barrister who wryly reflected that success rarely comes in the form you want, and the art is in turning that to your advantage.

Cynthia Kardell is president of Whistleblowers Australia.

Whistleblowers Australia membership

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

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

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

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