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

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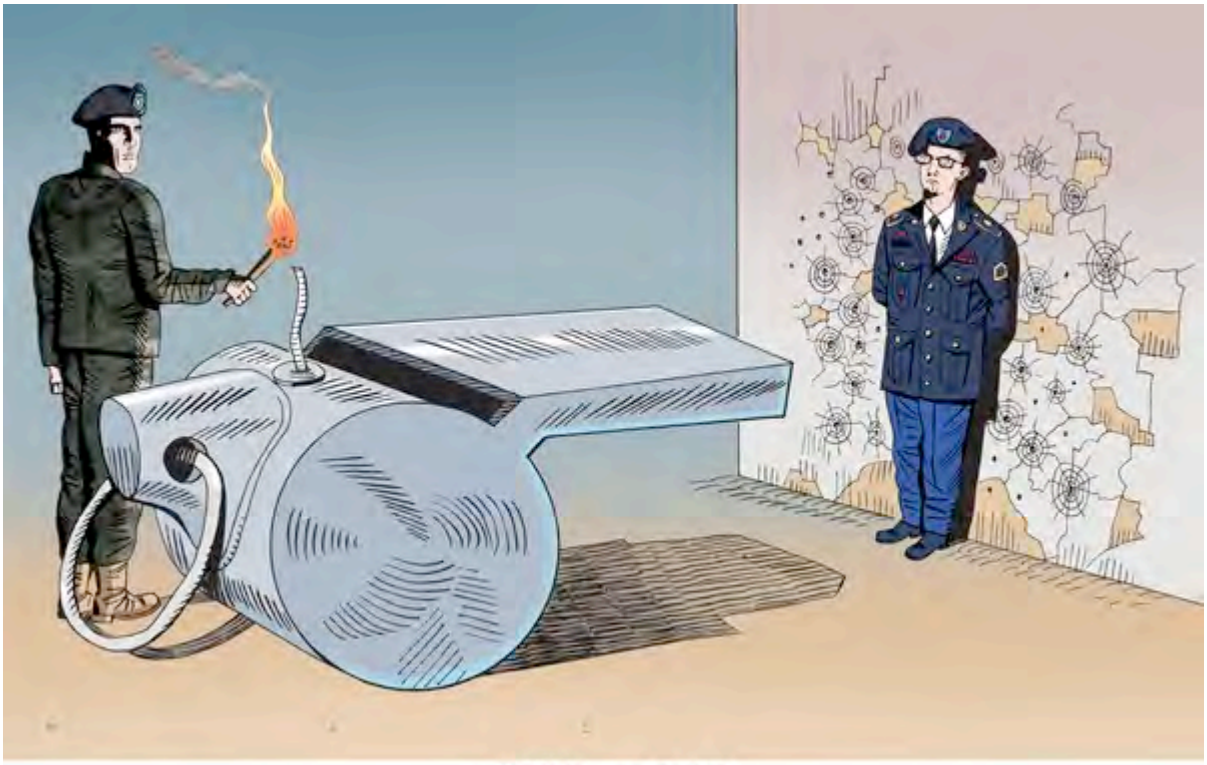


Whistleblower or Traitor?

Is there life after whistleblowing?

Lesley Killen

WHEN I was first asked this question a lifetime ago, I was numb with trauma. It was too soon to answer. Now, 33 years after the chain of events that led to my initial whistleblowing, the flash point and its eventual aftermath, I can finally give this question the consideration it deserves.

The short answer is "Yes there is," and I still blow the whistle. In fact, whistleblowing is a very important part of life because it makes for accountable and transparent communities. The response to whistleblowers, ordinary people acting in goodwill, is the litmus test on just how caring and responsible a community is.

My main regret is that I was so unprepared to deal with the attrition caused by the nine-year backlash. This was a never-ending cycle of industrial issues, discrimination, harassment, shunning, geographical relocation, demotions, humiliation and bullying culminating in being subject to workplace rage and assaults.

Like all life, my post-whistleblowing life happened because I was in the right place at the right time, in the right frame of mind to capitalise on the opportunities that unfolded before me.

My previous life ended because I blew the whistle about work-related issues. I was a NSW public servant based at the Museum of Applied Arts and Sciences, better known as the Powerhouse Museum. Actions have consequences and I paid the price of being a truth-sayer. This action had extreme consequences and both the message and messenger were subject to relentless vindictive reprisal.

My experiences of 1985–1995 and case history at the Powerhouse Museum were originally published in *The Whistle* in the December 1999 issue. I have come a long way since then. I am wiser than that vulnerable whistleblower, but wisdom is not a bringer of joy.

To recap, I was successful in my Workers' Compensation (1999) and Victim's Compensation (1998) litigations. I was awarded the maximum amount that could be granted, as the court judged that I did not contribute to my own demise. In 1997, I was granted an industrial apprehended violence order (AVO): my employer was ordered by a magistrate to no longer visit my home and disturb the peace.

Powerhouse Museum

On the other hand, I was unsuccessful in my small claims before the Industrial Tribunal of NSW (2000–2001) because my rights were deemed overturned by a bogus 1997 report by HealthQuest, a former branch of the NSW Health Department that provided psychiatric examinations. My employer did not believe I was ill. For 3.5 years, they placed me on *Leave Without Pay* rather than the *Sick Leave Without Pay* I applied for, despite the support of medical certificates. This decision was contrary to the federal *Sick Leave Act* and *Maxwell's case.*

By December 2001, I had learnt to pick my battles. So rather than appeal this irregular ruling in the Supreme Court of NSW I decided to invest in my future and create a better life for myself.

The journey of getting a life is daunting for anyone. To reach the destination of future self-sufficiency and inner peace I had to clear the debris of the old and move out of stasis.

To achieve this, I needed motivation, support, good health, confidence and employability. Before I could do any of this I had to function and overcome mental, physical, psychological, emotional and spiritual inertia. I had literally shut down and was operating in basic survival mode only. The world went on around me. A new millennium began unnoticed as I was stuck in the events of Friday, 8 September 1995.

My core issues were legally and financially resolved but not resolved in other important ways. Because my ex-employer escaped accountability, there was no meaningful justice. I had been in pain but was now numb. I did not regain my former financial independence or wellbeing despite these settlements. I paid off all debts arising from medical and litigation issues. I had money in the bank. I was sick, unemployed and on welfare. I no longer felt confident, safe, secure or even useful. In fact, I was exhausted. I could barely get out of bed and walk to the kitchen to feed my cat. Meeting Slinky's feline needs was my only motivator. Nothing else mattered because nothing made any sense.

I felt betrayed and let down. Conscious thinking was beyond me, so I operated by rote. I could not taste food or smell the flowers. I could not see colour, only shades of grey: black, white and sepia. Life was happening elsewhere to other people. I was in limbo on auto drive.

I was bedbound, mostly sleeping, for several months until my subconscious mind had thought it all through. I awoke to a battle call and it was simple — move on.

Thus, motivated to overcome the aftermath, I prioritised the simplest choices I could make sense of at that time.

- I could continue litigation or find meaningful work.
- I could play the role of victim or rise above it all.
- I could set goals to return to work in whatever capacity I chose.

This is not as easy as it seems. I had used my anger to drive me through the litigation process. Now that energy source was depleted and I was spent. I needed help from external sources.

My route out of my *Black Hole* relied upon me fully utilising several elements.

Support networks, including GP, counselling, remedial massagers, walking buddies, family, friends, neighbours, ex-colleagues, church, Centrelink (Australian social services organisation) and Whistleblowers Australia NSW branch, a wonderful and under-rated experience-based resource.

Rehabilitation and return-to-work providers. I needed an active strategy. Centrelink arranged for me to attend sessions with Mission Australia. However, when I was transferred from Sickness Allowance to a Disability Support Pension (DSP), I lost eligibility for these services. At the time I was most vulnerable support was removed. My plans were blocked again. Centrelink abandoned me to find my own solutions.

Paid work or volunteering. I eventually decided to volunteer. By helping others first, I could eventually help and heal myself. I volunteered for three non-government organisations, and for Woollahra Council.

I became a nursing home visitor for Mercy Arms. I joined the bush regeneration team at Harbourview Park, Bondi Junction. I enjoyed acquiring new skills. These once weekly work-based routines provided structure.

I was in the Programme to Aid Literacy (PAL) for St John Ambulance. They provided my return to work support in the form of police security clearance, first aid training, training for newborns, PAL training and placement at a local public school.

Harbourview Park

Through the advice of Dr Arthur Chesterfield-Evans, a great supporter of whistleblowers and whistleblower legislation in NSW, I was encouraged to volunteer for the Nature Conservation Council, a NSW-based environmental organisation, and to negotiate a rehabilitation/return-to-work package. I became assistant to the CEO and a volunteer supervisor. I commenced a two-hour week. I was soon working three or four afternoons a week in their library preparing files for archiving at the State Library of NSW. Training Guarantee provided computer training in-house and at WEA. Inspired, I commenced TAFE environmental studies and passed Certificate III. Nineteen years later I still volunteer there.

Then came the time to return to paid work. Who would employ anyone with my past history or my age? Paid employment reduces my welfare payments below the breadline. I discovered, by chance, the only way to benefit from paid work while on a disability support pension when renting privately is to become a self-employed contractor. I can write off legitimate business expenses, thereby rendering paid work viable. This is something Centrelink and rehabilitation providers do not tell you.

I advertised via the best network: word of mouth. Through social contacts I was offered casual work enabling me to keep my computer and secretarial skills intact. While on Sick Leave Without Pay, all 3.5 years of it, I completed the TAFE Accounting IV course. These skills are great assets to my small business endeavours as self-sufficiency is a must.

A fellow whistleblower recommended me to her friend's daughter as a child-minder. An interview was arranged. Beforehand, I had nightmares. I was breathless and sleepless. I was a nauseous, giddy and sweaty wreck. I nearly did not attend this interview, but I had promised to attend. For me, non-attendance is disrespectful and unprofessional. My past experiences so coloured my memories that the very thought of this interview was traumatic, but my work ethic was intact.

I was unaware that this interview was to be pivotal to a series of life changing experiences that led me back to paid work as a sole trader and financial independence. So much of life is based on chance encounters.

On 19 May 2004, I was interviewed for a job consisting of two three-hour shifts per week minding a newborn. I commenced two days after. Depressed, and lacking confidence or stamina, nevertheless I was enticed by praise and reward to increase my paid workload to house-keeping, then corporate cleaning at the office, CEO penthouse, managed properties then staff and client homes and later to French polishing of 16th–19th Century valuable antique furniture. These small steps back to financial independence were as demanding as learning to walk and as frustrating for this dyslexic as maintaining literacy skills.

French polishing

I found this challenging until I realised I had returned to paid work in an office. Now I choose when I work in this previously unsafe and threatening environment. I work flexible hours on my own and unsupervised. I am in charge of my work. I am the owner operator. I provide green and occupational health and safety training for my teams hired for large and small projects, such as over-weekend pre-lease cleans, or out-source special services — giving removals, pest, carpet and window cleaning solutions.

So before I understood what had

happened, I became a businesswoman with an ABN (Australian Business Number) to prove my sole trader status.

By helping others, I healed myself. My confidence is boosted because I know I am valued. For whistleblowers the price of taking part in society can be high. I learned the need for safety in numbers and by petitioning I can achieve this. I also learned the need to be hidden in plain sight. Being one signature among thousands helps me fly below the radar. By donating time, support or money I can remain anonymous, another necessary survival lesson I gleaned through whistleblowing.

My chosen employment niche is green, eco-friendly, recyclable, sustainable corporate cleaning with French polishing plus occasional child or pet-minding which sits comfortably with my passion for literacy, environment and animal rights volunteer work.

Fourteen years after my first nervous interview, I am transitioning to the Age Pension. Through this I discovered my data was electronically manipulated to show higher assets. There was no over-payment nor should alleged debts have been claimed back. The issue is currently under investigation with grants of appeal and review. This time Centrelink targeted the wrong pensioner.

I prefer that this is resolved before retirement. I will remain in Sydney till late 2019 when I shall retire and relocate to Adelaide to join family and friends there. Sydney is no longer an affordable city to reside in but I would like to see the light rail/tramway up and running. However, I won't hold my breath. So I am making a sea change and going south with my new cat Moon Shadow.

I plan to further my vocational studies in French and take a giant step into the intermediate classes and practise my French in France for three months each year. I will follow the sun and travel like my parents before me and spend summers in Australia and Europe with a little touring on the side taking up those tantalising online travel offers.

I embrace whistleblowing. I would rather do something than allow injustice to thrive. Yet the negative consequences of whistleblowing shaped the person I have become. Active whistleblowing is a force for positive change. There is a better life and whistleblowing is part of this. I create mine by following opportunities when I am good and ready to seize them. That naïve and traumatised whistleblower has morphed into this pragmatic survivor. If I had not blown the workplace whistle for ten years before the workrage assault that stopped my previous working life 23 years ago I would not be here today living comfortably in my own skin enjoying my brilliant new life.

Once a whistleblower in NSW, always a whistleblower in Australia.

I have closure because I understand the best revenge is that of a person with the patience to do the very thing my tormentors would never want for me — "to live long and prosper."

Retaliation

Kim Sawyer

EVERY WHISTLEBLOWER knows of retaliation, but others often don't see it. Retaliation is designed to be precise, to be as certain to the target as it is uncertain to others. That is why retaliation is so difficult to codify and legislate against. Despite overwhelming evidence, there has never been a prosecution for retaliation against a whistleblower in Australia. At the risk of being introspective, I will share some thoughts.

The discussion will relate to retaliation in the workplace, but it has greater generality. There are five elements to retaliation in the workplace. First the whistleblower is discriminated from other employees; they are put in a special category. Second the discrimination is often invisible to others. Third the discrimination is often sanctioned by the employer, or at least not redressed in a meaningful way. Fourth the discrimination is attributable to the whistleblowing. And fifth, the discrimination has negative consequences for the whistleblower resulting in lower reputation, loss of self-esteem, exclusion, and risk to their employment. These are the five elements of retaliation I have observed. To redress it we have to understand it.

There are limitless ways to retaliate against a whistleblower. Retaliation always begins with the respondent, the person(s) on whom the whistle is blown. Retaliation is an act of malice. It becomes a mind game between the retaliator and whistleblower. Retaliation is more effective the more senior the retaliator for they have greater leverage. Retaliation is more effective the more invisible the retaliation. Retaliation is more effective the more that others can be involved so as to develop groupthink against the whistleblower. And retaliation is more effective if the focus can be shifted on to the whistleblower rather than the whistleblowing. Retaliation is about deflecting others to look over there rather than over here. Retaliation is a strategy designed to weaken the whistleblower and thereby weaken the whistleblowing.

Let me summarise retaliation from the most serious to the most invisible. Necessarily it will be illustrated with examples. We learn from examples, not theory.

Employment risk

The most serious form of retaliation is the direct risk to a whistleblower's employment. Common examples include termination of employment, extensions to probation, early retirement, closer supervision and isolation from others. In a study of 761 US whistleblowers, Rothschild and Miethe[1] found that 69 percent lost their

1 Rothschild, J. and T. Miethe (1999). "Whistle-Blower Disclosures and Management Retaliation," *Work and Occupations,* 26(1), 107–128.

job or were forced to retire; 64 percent received negative performance evaluations; 68 percent had work closely monitored by supervisors; 69 percent were criticized or avoided by co-workers; and 64 percent were blacklisted from getting another job in their field. Certainly that was my experience in two whistleblowing cases ten years apart: in the first case severance of my employment contract and in the second early retirement. But other forms of employment discrimination are possible. A whistleblower often blows the whistle on a supervisor. A supervisor has power over appraisals and promotion. Natural fairness is never a priority. A whistleblower needs to find mechanisms to be appraised by someone else; enterprise bargaining agreements often contain such provisions. But promotion is more problematic. Whistleblowers must challenge conflict of interest; a respondent should never be on a selection committee where the whistleblower is an applicant.

The problem for a whistleblower is that the blacklisting extends to other employment opportunities. Again that was my experience. As a whistleblower I had been designated as a high risk employee. Interviews were dominated by questions about whistleblowing. The best approach is to prepare a brief legal statement that addresses the issues, alternatively a reference from the institution. However, few whistleblowers can fully hedge employment risk except by changing professions, relocating or retiring.

Reputational risk

Reputational risk is more general than employment risk. This was illustrated to me early on when a PhD student asked not to be supervised by me. He was not unhappy with the supervision but he could not afford to have me as a supervisor. They were his words, not mine. Reputational risk is one of the great risks of whistleblowing and respondents retaliate by exaggerating that risk. It is in their interest to do so. The PhD students I supervised were always put through more hurdles. The distinguished legal academic Richard Posner[2] wrote that "Reputation is conferred by those doing the reputing for their purpose, not his." Whistleblowers are maligned for a purpose.

Threats

Most whistleblowers experience threats, whether implied or direct. I have had many threats but the most intimidating followed testimony as a protected witness at a Senate inquiry. Whistleblowers can never be fully protected. Sometimes respondents reveal themselves. After an address at an Existentialist Society meeting in 2002 entitled "Whistleblowing and *The Trial*: A Kafkaesque Experience," I received a letter from a respondent to my whistleblowing who had attended. He likened me to "A drunk driver who had killed someone and claimed credit for the changes to the road rules that resulted." He used the word *malice* five times in the letter. He was projecting himself. Threats are self-revealing but regrettably too few recognise them.

Smearing

Smearing someone is prosecuting them without giving them the right to defend themselves. Smearing is a common form of retaliation designed to destroy the reputation of a whistleblower. And it cannot be easily redressed. I decided the best response was represented by Michelle Obama "When they go low, I go high." It served me well.

Ostracism

Ostracism began with the ancient Greeks where each year a citizen was expelled from Athens for a decade. In a study by Williams and Govan[3] which includes experimental evidence, the authors identify the effects of ostracism to include negative moods, feelings of isolation, loss of belonging, loss of self-esteem and meaningful existence. Most whistleblowers understand. Ostracism is designed to turn a whistleblower from insider to outsider, from a colleague to an unknown, and from one who is trusted to one who cannot be trusted. In my first case, the university wanted to move me to a building on my own, aptly named K house. In the second case, an academic told me that on her first day in the department, she was advised by the general manager not to talk to me; I was a troublemaker. Fortunately she didn't listen and we remain good friends twenty years later. Ostracism is group think; whistleblowers are scapegoated to expiate the wrongs of others. It is the ultimate form of retaliation.

Most whistleblowers are familiar with these forms of retaliation. The question remains *what is to be done?* Some general advice follows.

1. Documentation

My first advice to whistleblowers is to keep a diary, minute every conversation, and document every form of retaliation. Your recollection is not sufficient. The important point is not to exaggerate the retaliation, but not to underestimate it. If possible have it independently verified. All whistleblowers should have a retaliation file.

2. Push back

My second advice is to push back. Whistleblowing is better understood now than when I first blew the whistle; there is a well-identified correlation between whistleblowing and retaliation. However as employment law has become better defined, the retaliation has become more invisible, more likely smearing and ostracism than dismissal. Retaliation has become an invisible hand of discrimination. I regret that I

2 Posner, R. (1990). *Cardozo: A Study in Reputation.* Chicago: University of Chicago Press.

3 Williams, Kipling and Cassandra Govan (2005). "Reacting to Ostracism: Retaliation or Reconciliation?" in *The Social Psychology of Inclusion and Exclusion.* Edited by Abrams, D., Hogg, M., and J. Marques. New York: Psychology Press.

did not push back more; I was more conciliatory than I should have been.

I will provide three examples where I did push back. First, I challenged being appraised by a respondent to the whistleblowing. It took me six months but I asserted the principle of independent appraisal. Secondly, on one occasion a national newspaper interviewed respondents to my whistleblowing. There were defamatory inferences. Cynthia Kardell advised me not to sue, rather to write to the newspaper detailing the falsehoods and suggesting I write an article for the paper. It was good advice. The editors consulted lawyers and within two weeks I wrote a full page article titled "Disclose Encounters." It gave me credibility. Thirdly, in the second whistleblowing case, I decided to get an independent legal opinion on the matters associated with the whistleblowing. The opinion was written by a prominent senior counsel. Though it was 104 pages long, she charged me only $630, which underscored her sense of injustice. I submitted the opinion to the university and was given an assurance by the Chancellor and Vice-Chancellor that the discrimination would cease. It did not, but it was attenuated. There are ways to redress retaliation which are less costly and more effective than through the courts.

I wish I had pushed back more: that the letter in the confidential settlement in the first case had been made public; and that the private assurances by the Vice-Chancellor in the second case had been put into writing as a letter of reference. Whistleblowers need to protect their reputation through references showing they did the right thing.

3. Legal Relief

Australia lags behind in anti-retaliation provisions. Dixon[4] laments that

> While whistleblowers face a very real threat of retaliation, the current regime which purports to prohibit retaliation against private-sector whistleblowers is fragmented, complex and suffers from significant gaps.

It is the story of Australian whistleblowing protection, fragmented, complex and full of gaps. As Dixon recognises, the general provisions of the *Fair Work Act (2009)* protect employees from adverse actions including but not limited to dismissal and workplace discrimination, but a more direct remedy may be found in the anti-bullying provisions of the *Fair Work Act.* However, we have not established an anti-retaliation principle like that of the United States. We are well behind.

Moberly[5] discusses at length the US Supreme Court's anti-retaliation principle. He summarises it well.

> During the last fifty years of its retaliation jurisprudence, the Supreme Court has recognized that employees must be protected from retaliation in order to further the enforcement of society's civil and criminal laws. This "Antiretaliation Principle" allows the Court to examine antiretaliation protection as a law-enforcement tool that benefits society, rather than simply as extra protection for employees provided at a cost to employers. The Court makes three assumptions throughout its opinions to support the Principle: (1) employees are in the best position to know about illegal conduct by their employer or other employees; (2) employees will report this information if the law protects them from employer retaliation; and (3) employee reports about misconduct will improve law enforcement.

This is the type of principle we need established in Australia, and it is a principle that should be established by the High Court.

The United States also has very specific anti-retaliation provisions written into the False Claims Act. They are restated here.

> Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate district court of the United States for the relief provided in this subsection.

We need an Australian False Claims Act if only to codify anti-retaliation relief.

4. Detachment

While there is a need to document, to push back and to seek legal relief, all whistleblowers must eventually detach from their problem to become the observers they are supposed to be. Detachment is important; it is essentially Buddhist but can also be thought of as existentialist. It is a strategy that allows whistleblowers to survive and to adhere to their principles and not the principles of others. Ultimately I have come to understand that the only reputation that matters is how you regard yourself.

Kim Sawyer is a long-time whistleblower advocate and an honorary fellow at the University of Melbourne.

4 Dixon, O. (2016). "Honesty Without Fear? Whistleblower Anti-Retaliation Protections in Corporate Codes of Conduct," *Melbourne University Law Review,* 40, 168–204.

5 Moberly, R. (2010). "The Supreme Court's Antiretaliation Principle," *Case Western Law Review,* 61, 375–413, quote at 380.

Laws designed to erode who we are

Cynthia Kardell

IN MARCH, Whistleblowers Australia made a submission to the Parliamentary Joint Committee on the Intelligence and Security Foreign Interference Transparency Scheme Bill 2017 and its three companion bills. The submission explores the policy ideas and purpose that underpin these bills and existing terror related laws. They discard longstanding legal principle and practice in criminal law. They criminalise benign conduct, social justice concerns and ethical professional obligation. They stifle political debate and association, subvert national security concerns and reinforce the ability of government to protect itself from the consequences of its own illegal acts.

But here, I'm going to home in on the things that really trouble me, at a time when society is literally screaming out for more openness and accountability in all sectors, including in government.

We know that bad things do happen to good people, even though most still cling to the idea that bad things only happen to bad people, not people like *us*. They comfort each other with things like "the government wouldn't do that" and "it's wrong and they know the rules." But we're wrong to cling to these ideas and beliefs, when it's clear that the axe can and does fall wherever government chooses. Bad things do happen to good people. Google the hapless young Queensland doctor Mohamed Haneef about his terrifying brush in 2007 with the (then) new terror laws, former minister Kevin Andrews and a government which would not admit they'd got it very wrong. Haneef, who was falsely accused of aiding terrorists, won out in the end: but we all lost, because those same policy ideas have been tweaked and pulled tight in controlling every security concern government has.

Mohamed Haneef

Think about it. This government argues that in order to gaol a terrorist, long established laws need to be abandoned, so that it is easier to convict those who are politically aligned with organisations like al-Quaeda and Da'esh, who *would do us harm*. No one argues that terrorists wouldn't do us harm, but in this Bill those who *would do us harm* could include the whistleblowers and journalists who are quietly going about their business on your and my behalf. So, if you're thinking these new laws won't be brutal, think again.

For a taste of how they might operate, Google what happened in 2014 after the government sacked a group of *Save the Children* workers for allegedly disclosing "sensitive information" to the media. The Minister went into overdrive. He dismissed the claims of self-harm and accused the workers of encouraging the refugees on Nauru to self-harm. As preposterous as this still is, I'm sure there are those who believed the Minister at the time and still do, even though the Moss Review in 2015 exonerated the workers, who were later compensated. The "sensitive information" was only ever sensitive because it revealed the terrible price refugees are still paying to shore up the government's "turn back" policy. In this Bill those same workers could face criminal charges.

More worrying is the chilling effect the Minister's actions would have had on every employee and potential whistleblower in the border force and immigration sectors. Most of us are not brave: we have families and mortgages to pay. And fear, even shame, will mean most will stifle their concerns and even *join in,* badgering and marginalising those who won't. Too many even delight in doing it. The media moves on, most of the punters don't remember the minister was deliberately wrong, and those who do don't matter, because it has created a culture where bad things keep on happening to good people, to keep a lid on things.

The Holocaust teaches us how ordinary good people, scared for their life, will turn on others rather than be taken for one of "them" — first, the unionists, communists and then ethnic Jews, gypsies and finally, anyone who wouldn't toe the line. In a democracy, the trick is to resist that fear, recognise how like "them" we all are and push back really hard against a government that tries to get *you* to single "them" out for special treatment. Why? Because you can and should! Otherwise we risk sliding into something like a police state, because these laws could mean gaol time for the whistleblowers, the journalists and their support staff for *just* gathering *or* receiving *or* photocopying *or* publishing classified information.

In the public space, the government's purpose is similar. It wants to stop charities and not-for-profits of every description publicly pursuing their concerns about government policy by forcing them to self-censor rather than deal with onerous disclosure requirements, which most agree would see their revenue dry up. The policy raises issues of public trust, who needs it most, and the right of supporters, donors and employees to exercise their right to donate to a particular purpose that best fits with their worldview.

The Bill's design assumes that most will put government funding ahead of public credibility, allowing government to identify and weed out those charities that they think are really activist organisations, intent upon driving anti-government sentiment.

This is nasty stuff, but it won't work. Remember the Save the Children debacle on Nauru. It's no GetUp,

but losing a government contract was not enough to stop them rejecting a law that stopped from them doing what they thought they ought. They understood that if their supporters couldn't trust in their integrity, donations would dry up in ways that would really hurt.

If donations did dry up, it would cost government a lot more. Government needs the charities, not-for-profits and community organisations to deliver many of its services domestically and as humanitarian aid abroad. It needs them to be, and seen to be, independent of government, otherwise they could be denied access to another country. Or we'd see more of their staff being deliberately targeted by foreign governments and other actors or jailed as spies. Or the entire program could fail at a huge cost to the local population and government, because it is not trusted. I'm thinking here about the polio vaccination program which failed spectacularly in Pakistan in 2014. The local population got to know that US intelligence agencies were using the charity as a cover for its operations. Two years before, polio notifications were reported to be down to an all time low, but since then they have skyrocketed.

Then there's the issue of who needs whose trust the most and why. Government needs the public to trust the charity, to ensure the delivery of its services. But a charity does not need a government's trust to build public trust in its programs and a donor base. Donors, whether to the more conventional like the Red Cross or Medecins Sans Frontieres or the Institute of Public Affairs or GetUp, all exercise their right to freely associate with and donate to the *purpose* of their choice.

I think government ignores its own reality at its peril. Charities, whether politically active or not, occupy the public space where free speech and purpose should remain dominant — not government. The government needs to decide whether it is a regime in waiting like Turkey or a representative democratic government and stop trying to manipulate us at our worst.

This Bill also ensures that whistleblowers and journalists are liable for criminal prosecution in serious circumstances where they willingly communicate secret *information that prejudices national security*. On the face of it, it might seem reasonable enough, but what is kept secret and why? Is history any help here?

Usually both major parties are on a unity ticket. They reassure anyone who will listen that we can rest easy, knowing that they've got our back. Is that enough? Nothing to see here, so move on? Or is there sometimes something much more insidious going on, because our recent history is littered with some shameful examples?

I have mentioned the case of Kevin Andrews MP, who falsely accused Queensland doctor Mohamed Haneef of aiding terrorists, but I'd like you to think about a more recent case which is in its final throes after nearly 15 years. It is the story of our government, Timor Leste and Witness K, the whistleblower from the Australian Secret Intelligence Service, all played out in the name of protecting our national security interests.

Foreign ministers Gareth Evans (Australia) and Ali Alatas (Indonesia) toast the 1989 signing of the Timor Gap treaty while flying over the Timor sea. The Australian government was the only one in the world to recognise Indonesia's annexation of Timor Leste.

It's a window into why governments keep information secret and whether it is ever reasonable for a whistleblower or a journalist to pay when government prejudices our national security.

It begins in March 2002. Just two months before Timor Leste became an independent nation, when Australia withdrew its recognition of the maritime boundary jurisdiction of the International Court of Justice. The Australian government short changed Timor Leste billions of dollars in government revenue by refusing to agree on a maritime boundary and bullying it into a series of dubious temporary resource sharing agreements that gave Australia the lion's share of their gas reserves.

Witness K blew the whistle after being involved in an illegal operation to bug Timor Leste's cabinet room in 2004 to give our government an advantage in highly sensitive talks over the future of those underwater resources. Timor Leste launched legal action in The Hague. Then the Canberra home of Timor Leste's lawyer, Bernard Collaery, was raided by intelligence agencies in 2013, an action Timor-Leste described as "unprecedented, improper and inexplicable." Witness K had planned to give evidence at The Hague, but had his passport seized, preventing him from leaving Australia. The warrants for the raids were issued by the former attorney general George Brandis, who denied they were designed to aid Australia's case in The Hague.

Bernard Collaery

Witness K?

Witness K subsequently launched secret proceedings to recover his passport, which were resisted by the Australian government. In 2016, foreign minister Julie Bishop intervened in the case and refused to issue him a passport, describing him as a threat to national security, an assessment Collaery described as "laughable". "How could it be a prejudice to Australia's national security for K to repeat what he has said? And that is that an unlawful operation took place abroad," he told the ABC. (*The Guardian,* March 2018)

On 7 March this year Australia and Timor Leste signed a treaty in New York that determined the *first* maritime boundary between the countries, with the boundary running halfway between the two countries as advocated by Timor Leste, consistent with international law. But they have yet to agree on how to develop the vast Greater Sunrise gas fields, with deposits worth an estimated $50 billion, which *now* lie mainly in Timor Leste's waters. Timor Leste's chief negotiator Xanana Gusmao claims that's because our government is colluding with Woodside Petroleum and ConocoPhillips.

Foreign minister Julie Bishop recently touted the treaty as an example of how committed we are to a *rules based system*, unlike a certain China with its blatant land grab in the South China Sea. You have to say they either live in a parallel universe or they are hoping that we are not interested or not across the details or they've got us sufficiently anxious about alleged Chinese interference to let it pass. I say, it's all that and more, but it is in our hands to make this type of behaviour a thing of the past by designing security laws that deny government being able to punish whistleblowers that expose their lies and chicanery.

Another security scandal emerged, well after Brian Hood blew the whistle on the Reserve Bank of Australia bank note bribery scandal in 2005, with the more recent prosecution of its subsidiaries' executives on bribery charges. The actual trial only began in Melbourne last January, but we aren't allowed to know what is going on, because in June 2014 the federal government through the Department of Foreign Affairs and Trade (DFAT) secured suppression orders, seeking to protect the identity of various Asian political figures from being publicly named as alleged participants in the scandal.

The DFAT application stated it was "to prevent damage to Australia's international relations that may be caused by the publication of material that may damage the reputation of specified individuals who are not the subject of charges in these proceedings."

A leak allowed WikiLeaks to publish the suppression order, which lists 17 very high ranking officials, including Malaysian Prime Minister Najib Razak, who was already the centre of other serious allegations of corruption.

Najib Razak

The trial commenced on 29 January this year. Two days later, it was adjourned until later this year to allow one of the defendants to pursue an application for legal aid, as he had run out of money.

Just how outrageous is this? Does anyone seriously think that Australia's security is prejudiced by anyone in either country knowing how or why Malaysia's Najib Razak may be implicated in these proceedings? Or is it more likely that the evidence would reveal our government worked to cover up the bribery more than ten years ago? I know what I think the more likely.

Since writing the submission Najib Razak lost government to Mahathir Mohamad in elections on 9 May, his passport has been confiscated, he is being investigated and faces prison. And former opposition leader Anwar Ibrahim has accused Australia of being "completely dishonest" about Malaysia's scandal-plagued former Prime Minister Najib Razak.

The two scandals demonstrate why some material is kept secret and the lengths to which governments will go to lie, cheat and steal to protect their own survival and legacy. But even if these two examples are the exception, we need to ensure that a criminal prosecution for the unauthorised disclosure of secret information is not available, where the *government is implicated in the wrongdoing* revealed by classified material and or its investigation. Otherwise illegality and cover-ups in the name of protecting our "national security" will not remain the relatively isolated incidents *we like to hope* they are.

An outcome like this would be in lock step with current public opinion, for example where a jury found a former police sergeant who leaked footage of officers bashing a handcuffed man in a Gold Coast station basement not guilty of criminal misconduct for disclosing unauthorised information.

These are just some of the more troubling aspects of the Bill which should be rejected in large part and the existing terror laws repealed as a part of that process. The government has waged the so-called war on terror since 9/11 and it has comprehensively failed other than to hasten the spread of authoritarian causes by governments against whistleblowers, the press and those "others" — not like us — here in Australia and across the globe.

The submission has been published on the parliamentary website. See http://bit.ly/2MLonOB.

Whistleblowers Action Group awards

Queensland Whistleblowers Action Group (QWAG) selected former Queensland Premier Mike Ahern as the Whistleblower of the Year for 2017. The Whistleblower Supporter of the Year award was given to journalist Matthew Condon.

Whistleblower of the Year

Former Premier Mike Ahern made his disclosures to the media about the failure, by the Royal Commission into the Institutional Response to Child Sexual Abuse, to investigate allegations about a major paedophile case in Queensland, or to inquire into the response by Queensland police allegedly to close down investigations of the same case and allegedly to persecute honest police who attempted to reopen that case. The reason reported to have been given to Mr Ahern by the Royal Commission was that the case did not involve an institution.

Mike Ahern

Mr Ahern's disclosure has given voice to many concerns held by the victims of child sexual abuse in Queensland and their families about the failure of the Royal Commission to make sufficient inquiries outside of selected religious groups, in particular, the police and justice institutions. When the Royal Commission was established, QWAG wrote of its concerns to Prime Minister Gillard and Opposition Leader Abbott. QWAG reported to the Royal Commission our concerns about differences in how limited inquiries in Queensland were being reported. We noted the Royal Commission's own statistics about the hundreds of complaints made to police, yet the Commission was blaming only the religious for the lack of response. When asked why the Police Commissioners from each state too were not called before the Royal Commission as were the bishops, the Royal Commission claimed that the Commission did not have the time to explain. But QWAG's voice and that of families affected by police and justice authorities and their institutional response are as small as the voice of church victims was before the Royal Commission began.

Royal Commission into Institutional Responses to Child Abuse

Mr Ahern's disclosures, from his position of high standing, give visibility to the divided character of that Royal Commission, and will quickly bring public interest, QWAG hopes, to the obvious question as to why the police, who had the power to investigate offending churchmen, police officers and justice officers, did not do this. Why too has the Royal Commission not shown sufficient interest into the allegations of inaction and cover-ups by institutions whose officers had the power and the role to investigate those decades of complaints? Why was the focus put on cardinals not also placed on commissioners?

Whistleblower Supporter of the Year

The Whistleblower Supporter of the Year Award for 2017 has been given to journalist Matthew Condon for his research into and reporting on a series of historic corruption or criminal cases, the records about which the police and the government are allegedly keeping closed.

Matthew Condon

These include the police investigation into the Whiskey Au Go Go nightclub fire, the allegations against former Police Commissioner Bishop and certain cold case murders. He has recently linked these behaviours to the unknown rationale of the Right to Information authorities in their closedown of access to government records in whistleblower cases, in particular, the two decades of the Fire Ant Program fiasco. The further context given to these behaviours include the loss of freedom and democracy in Queensland and the abandonment of the "clean broom of the Fitzgerald Inquiry into police and political corruption."

Whiskey Au Go Go nightclub fire

QWAG, with its two awards, has sought to recognise both the integrity and the courage of whistleblowers, and also the contribution of persons whose actions have been of outstanding assistance to improving the circumstances for whistleblowers in this state.

This is the twenty-fifth year that the group has made its awards to deserving persons.

Media watch

Live animal export: seafarer ethics, morals, bravery and honour

Lynn Simpson
Splash 24/7, 29 May 2018

FAZAL ULLAH is a man that any decent person on the planet should be proud of. He has my profound admiration.

As a new seafarer he joined a ship to be a navigational officer. Little did he know the ship he was to join would change his life forever and show the world his depth of character. His upbringing and intelligence graced him with a wealth of morals, ethics, kindness, compassion, bravery and extraordinary honour.

People should be queuing up to shake his hand and congratulate him on his personal values.

Many people from countries that have experienced national hardships such as Pakistan are often less vocal about wrongdoings compared to others from more entitled countries. Fazal stands in the elite group of moral, honourable superheroes such as Malala Yousefzai.

From adversity often comes strength, pride and opportunities.

Fazal recognized a wrong that thousands of people have been exposed to on the world's fleet of live export ships.

Lynn Simpson

Yet most were silent to the masses. I know many spoke of disapproval during voyages, asking why do "we" do this? Is this trade necessary?

I was not as smart as Fazal. I tried to improve things through official channels, not realising the failures of our regulator, the Australian Department of Agriculture. I did my job, sent my reports of concern and complaints with very little acknowledgement and close to no improvements. I wish I had had his smarts.

Fazal saw the extreme urgency of the animal and crew welfare issues and bypassed the flawed and ineffectual regulators, and went straight to Animals Australia with a view to immediate exposure of the obscene suffering he witnessed. Animals Australia is an organisation that is now recognized for their relentless, proactive commitment to improving global animal welfare.

The world changed at this moment.

The atrocity of the live export trade was then available for the world to see.

And see it has.

The global public and political groundswell of action and condemnation of this trade is only getting stronger every day. I watch as others watch the footage. I see their shock, shame, anger, disgust, and tears.

I read the comments coming in from around the world praising Fazal for his temerity and bravery.

The shipping industry can be fickle, especially the live export trade — likely because the trade is operating on borrowed time, and knows it, regardless of the rhetoric it sprays. It should have died years ago.

The insecurity around its future from the operators is palpable.

Fazal may well have become another "lost at sea" statistic if he were discovered to be filming and recording such atrocities with the view of passing them on to a powerful advocacy group for public exposure.

I wish I were exaggerating, but I have read too many reports about crew who differ in ethical views or risk adversity. Many a report has concluded with a vague statement speculating that the missing person is not conclusively thought to be a suicide or accident due to behavioural or attitudinal differences.

The world is in awe of Fazal and his courage.

He should be considered a role model to all people on this planet and especially to the seafarers sailing the seas in a poorly transparent industry such as shipping. Both *Splash* and I have tried to get him formal recognition and/or an award from the IMO (International Maritime Organisation).

His contribution to animal welfare and animal cruelty awareness makes me brim with pride as a former seafarer.

Unlike many "whistleblowers," Fazal has been rightly recognised for his honourable action and now has a choice of amazing future career paths. I believe this shows a change in the world's perception of whistleblowers.

The public are sick of big business and government's lack of transparency and their brutal reprisals against truth tellers. Whistleblowers like Fazal are finally getting the respect they so greatly deserve!

I believe all decent people in the world wish you well, Fazal. Thank you.

"I gift wrapped Commonwealth Bank for ASIC and it did nothing"

Jeff Morris
Canberra Times, 27 April 2018

TO HAVE ONE BANK go rogue may be regarded as unfortunate but to have them all go rogue smacks of carelessness. Or, to put it another way: one rogue bank is a bank scandal; when they all go rogue it is a failure of regulation.

What we are looking at now playing out in the Hayne royal commission is the final indictment of Australian Securities and Investments Commission's (ASIC) complete and utter failure as a regulator over the past two decades.

Commissioner Kenneth Hayne is incredulous in querying a condition of AMP's holding of assets on trust for

beneficiaries, as Treasurer Scott Morrison asserts some of the group's behaviour could result in "jail time."

"An unusual form of trust, isn't it?" — Hayne

The revelation that AMP deliberately misled ASIC on no less than 20 occasions may be shocking but its deeper significance is what it says about the major players' attitude towards ASIC as a regulator.

At a minimum it would suggest that they are not as afraid of ASIC as they should be.

Based on my own experience with ASIC over the past 10 years, I would go further and say that the big players treat ASIC with utter contempt.

In my own case, way back in October 2008, I was one of the whistleblowers who gift wrapped and dropped into ASIC's lap a major fraud at CBA's Commonwealth Financial Planning, involving not just a rogue financial planner, "Dodgy" Don Nguyen, but a management cover up to defraud the victims of compensation — which included sanitising the client files.

CBA lied to ASIC, and ASIC believed them, taking no action until March of 2010 — 17 months later — and then only after the whistleblowers turned up at ASIC and pounded the table to demand action.

Jeff Morris warned the government not to trust Commonwealth Bank's assurances. Photo: Rob Homer

In the meantime all the files had been sanitised. To this day ASIC refuses to accept that the file tampering ever took place. I guess to admit that possibility would make them look even more incompetent.

Even when ASIC did finally act it was through their usual limp-wristed Enforceable Undertaking and a self-administered compensation scheme which CBA shamelessly rorted.

ASIC did nothing to protect me from the wrath of CBA but when I left the bank in February 2013 it was with the firm intention of blowing the whistle publicly, not just on CBA's corruption but on ASIC's complacent uselessness as well.

Treasurer Scott Morrison has insisted ASIC is a tough cop. Photo: AAP

In June 2013, after a series of shocking revelations by Fairfax Media, Nationals Senator John "Wacka" Williams moved for a Senate Inquiry into ASIC and CBA and secured a unanimous vote in support.

When this inquiry reported 12 months later in June 2014 CBA's story had completely fallen apart. They eventually had to admit that they had "inadvertently misled" ASIC about the compensation scheme under the Enforceable Undertaking whereby they had comprehensively deceived and ripped off the victims of what turned out to be a coterie of "rogue planners."

The inquiry concluded that ASIC was a "timid and hesitant" regulator who could not be relied upon to hold CBA to account. They concluded that a Royal Commission into the CBA was warranted.

Immediately the then Abbott government hosed down any prospect of a royal commission. I drove to Canberra to implore Mathias Cormann not to trust CBA.

I told him that ASIC had trusted CBA who had then made monkeys out of them. I warned him that the same thing would happen to him. It was in vain, of course: three weeks before CBA's annual general meeting, Cormann obligingly ruled out the royal commission in exchange for yet another self administered compensation scheme.

To say this scheme was a farce would be unfair to farces everywhere.

Suffice to say that under this scheme CBA actually dictated to the victims who their "independent" customer advocates would be.

The significance of CBA being let off in 2014 after being caught in the most egregious misconduct is playing out in the royal commission today.

Incredibly, the other major players saw no reason to learn from what had been exposed and continued to operate financial planning businesses in the same way as the discredited CBA model.

Even more incredible is that, after being excoriated by the Senate Inquiry, ASIC has allowed them to get away with it. This raises the question as to whether ASIC has any clue as to what goes on in the industry.

The ticking time bomb for Scott Morrison's "tough cop on the beat" is the fees for no service scandal.

Everybody in the industry knows that this was deliberate theft on the part of the big players. I blew the whistle on this in a submission to the Senate inquiry in May 2014.

Yet ASIC has gone along with this incredible story that the major players accidentally stole hundreds of millions of dollars from their clients due to a series of unfortunate accidents. Why?

Perhaps because the truth is too painful: that ASIC the regulator was the only one who didn't know what was going on.

AMP has broken ranks on this and admitted they acted deliberately. Others will follow. The big question then will be: did they really lie to ASIC or was it ASIC that wanted to be lied to?

The real problem with royal commissions

Kim Sawyer
The Age, 14 May 2018

Australia has had more than 150 royal commissions but perhaps none more important than the banking royal commission. The royal commission is revealing more than the anomalous practices of financial advisers; it is revealing flaws in regulation.

Senior Counsel Rowena Orr in action at the banking royal commission.
Photo: Eddie Jim

For many years whistleblowers have avoided regulators and gone to the media. The first Senate inquiry into whistleblowing in 1994 showed that whistleblowers did not trust regulators; they saw them as captured by the institutions they regulate. The question asked then is the question we should ask now. *Who regulates the regulators?*

There has never been greater demand for regulation, but the supply has never been more constrained. Regulators are constrained by lack of information as the royal commission has shown; wrongdoers never disclose until they have to. Regulators are also constrained by tight budgets; and the budget cuts to ASIC in 2013 didn't help. Regulators have become more like risk managers, minimising short-term institutional risks rather than the systemic risks that matter most. Systemic risks are left to royal commissions.

The problem with royal commissions is that the regulatory zeal lasts only so long. The regulatory cycle is referenced by crisis and, once a crisis is over, regulation returns to what it was. It's not just in Australia. When the US Congress passed the Sarbanes-Oxley Act of 2002 there were 180 pages of regulation; within four years it had been curtailed to 65 pages. The Securities Exchange Commission yielded to those it regulated.

The problem is that with every new infraction we get more red tape. Red tape penalises the compliant; and the miscreants always seem to know how to avoid it. We need a new approach. Whistleblowing provides insights as to how regulation must change. Whistleblowers are the independent regulators not captured by institutions; they observe the conflicts of interest that regulators do not observe; and they provide information ex-ante rather than ex-post. Whistleblowing is a template we can learn from.

Whistleblowing makes regulation more uncertain; the regulator could be in the next office. Uncertainty is a deterrent to non-compliance. The implication for regulators is to randomly sample institutions and to use the observations of whistleblowers as red flags. Red flags are used in many anti-corruption settings, most notably the *US Foreign Corrupt Practices Act*. When there is a sequence of red flags, it suggests the need to strongly regulate the institution. There were red flags about our financial institutions for more than 10 years but regulators did not act. They should have.

Whistleblowers are often the competitors of regulators. Regulators are monopolists and the regulated know how to capture their rents. Whistleblowers should be able to submit information to more than one regulator and with greater regulatory oversight. An example was provided by the Murray inquiry of 2014 which recommended a Financial Regulator Assessment Board to oversee financial regulators. Like other markets, the market for regulation needs to be competitive.

Royal commissions and other public inquiries show the power of transparency. The US False Claims Act is used by whistleblowers to litigate on behalf of the government. Litigation confers three advantages; it imparts transparency through court proceedings; it establishes precedents for future regulation; it provides tests of regulations. The False Claims Act is a strong deterrent to non-compliance, and it relates to any false claim not just fraud. Since 1986 when the Act was amended, more than $US56 billion of fraud has been recovered, and even more deterred. An Australian False Claims Act is long overdue.

The False Claims Act has shown the importance of incentives. Under the act, whistleblowers are incentivised to report wrongdoing; on average they receive 17 per cent of fraud recovered. Before 1986, the incentives were too low and the fraud recoveries were less than $100 million. Regulation must incentivise regulators to prosecute. Regulation is meaningless without prosecutions; maximum penalties are non-binding when the maximum penalty is never observed. If regulators were incentivised to prosecute, they would be incentivised to regulate the networks of corruption they often ignore.

A nation that tolerates corruption becomes corrupted but never knows the opportunity cost. Nearly everybody from ASIC to whistleblowers has recognised that Australia needs to change its culture. We can make a start with this royal commission by learning from those who have tried to make that change. For without whistleblowers there would not have been a royal commission.

Kim Sawyer is an Associate at the School of Historical and Philosophical Studies at the University of Melbourne.

Journalists and whistleblowers at risk

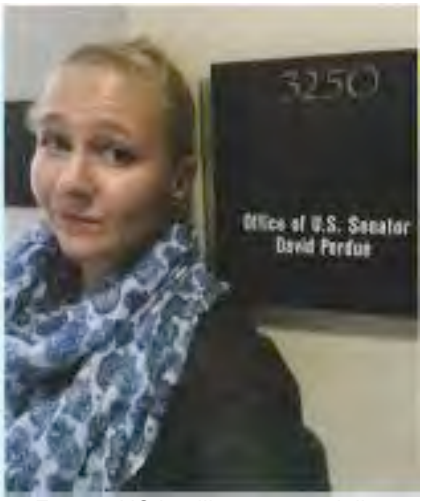
New Internationalist, June 2018, p. 12

In 2017, 65 journalists were killed, 326 were detained and 54 held hostage. The number of women journalists killed doubled. They were also the largest group targeted by hate speech via social media. Syria was the most dangerous country to be a reporter, but Mexico, not officially at war, was almost as lethal. Watchdog journalists, doing investigative reports and uncovering corruption, are especially vulnerable. Turkey and China imprison the most journalists.

But sources and whistleblowers are also at considerable risk, writes Naomi Colvin of the Courage Foundation. "They are the Cinderellas of the press freedom world, with few legal protections … They risk liberty and livelihood to put information in the public domain and rely on the ability of journalists to keep their identities

secret. In a world of pervasive surveillance this is a big ask. G20 countries have made formal commitments to protect whistleblowers, with mixed progress. National laws often exclude groups like contractors, 'hacktivists' or those working in the intelligence sector.

"Whistleblowers continue to pay the price for the wrongdoing of states. The only individual to be prosecuted in relation to the US's torture programme is CIA whistleblower John Kiriakou, while Thomas Drake has faced prosecution for the NSA's surveillance abuses. Today, the only person in custody in relation to alleged Russian interference in the 2016 Presidential election is 26-year-old Reality Winner, an alleged whistleblower. Charged under the Espionage Act for sending a classified document to the media, she faces 10 years in prison. Winner is the first victim of the Trump administration's 'war on leakers'.



Former US intelligence specialist Reality Winner, currently in jail for helping to expose Russian hacking efforts. Her trial is expected to start in late 2018.

"The environment for national security whistleblowers has become more precarious post-Snowden, with new criminal penalties introduced or under consideration in Australia, Britain and New Zealand. In Europe, the situation is slightly better — the European Commission is planning an EU-wide Whistleblower Directive. Britain, meanwhile, is proposing to water down its safeguards under the guise of corporate protection, cyber-scaremongering and police demands to compromise encrypted data."

Naomi Colvin is director of the Courage Foundation which campaigns for the rights of sources and whistleblowers. couragefound.org
Other action: Reporters Without Borders - rsf.org/en
Committee to Protect Journalists - cpj.org

Crowdfunding campaign for Swiss whistleblower breaks all records

The Local, 12 May


Natanael Wildermuth, who organised the crowdfunding campaign with Adam Quadroni (right). Photo: Natanael Wildermuth

DONORS HAVE PLEDGED over 140,000 francs to Adam Quadroni who lost everything after helping expose a massive price-fixing ring in the building industry of a Swiss region.

The campaign was launched by Swiss engineering student Natanael Wildermuth after he read about Quadroni's plight in a long investigative piece by Swiss news site *Republik.*

Quadroni, a builder in the south-eastern Swiss region of Graubünden, lost his business and reputation and finally his wife and children after lifting the lid on price-fixing practices by builders in the region who were colluding to systematically overcharge for construction projects.

A long-term member of the cartel himself, Quadroni found his own business began to suffer once he stepped away from the price-fixing ring. In 2013, he declared bankruptcy and he has been surviving by doing odd jobs since then.

In 2017, Quadroni was arrested by a police commando unit after an argument with his wife in circumstances now being investigated by prosecutors in Graubünden. He was involuntarily admitted to a psychiatric ward but doctors were unable to verify reports he had been suicidal and he was released. During that time his wife left him with his three daughters.

"I wanted to help Quadroni get his life back on track," Wildermuth told *The Local* recently of his decision to launch the campaign.

"I especially want to help Quadroni, to get his daughters back," the student said of the first such campaign in Switzerland to help a whistleblower.

It turns out Wildermuth, who is studying timber construction engineering, is not alone in wanting to support the builder. A total of 1,285 backers had pledged 142, 505 francs to Quadroni as of Saturday morning, mostly in the form of small pledges of 25 or 90 francs, although five pledged 2,000 francs each.

Wildermuth's campaign has broken all records for Swiss crowdfunding site wemakeit, the platform's manager Céline Fallet told Swiss daily *Tages Anzeiger.*

The initial aim of the campaign was to raise 100,000 francs to help Quadroni. But with that mark now well and truly reached, Wildermuth and former president of the Federal Supreme Court of Switzerland Giusep Nay, who is administering the money received from donors, are now considering their next step.

The initial outlines of the Quadroni campaign already suggested possible assistance for other whistleblowers. While Wildermuth and Nay have not yet made any detailed plans, among the possibilities being considered is a foundation.

Whistleblowers within private firms receive only limited protection under the Swiss justice system. While employees within the federal administration — and, to differing degrees, cantonal employees — have access to an anonymous reporting service, employees of private firms often face losing their job and prosecution.

The Swiss parliament has been looking at legal changes to boost protection for whistleblowers for several years without making progress. The Federal Department of Justice and Police is set to tackle the issue again in the second half of 2018, according to the *Tages Anzeiger.*

Whistleblower wins 15-year battle after UN sacked her

Sean O'Neill
The Times, 6 June 2018

A WHISTLEBLOWER called for independent oversight of the United Nations yesterday as she won a 15-year legal fight after it sacked her when she demanded a full investigation into the rape of a Sri Lankan refugee by an aid worker.

Caroline Hunt-Matthes, 56, a British investigator, was dismissed from UNHCR, the refugee agency, in 2003 when she raised concerns about how senior officials had obstructed an inquiry into the attack. She challenged the dismissal but the UN resisted her claim and forced her into one of the longest cases in the history of the organisation's internal justice system.

Caroline Hunt-Matthes

UNHCR said in an agreed statement yesterday that the length of time the case had taken and the impact on Ms Hunt-Matthes's career and family life were "a matter of regret." Ms Hunt-Matthes, who had been involved investigating the genocide in Rwanda, joined UNHCR as its only trained investigator.

The case in Sri Lanka was her first field mission. The victim, who was working for the agency, had been sacked while the alleged rapist was transferred to a job in a different part of the country.

Ms Hunt-Matthes sent reports to Geneva and New York voicing her concerns that the alleged perpetrator was being protected by UNHCR officials.

Instead of a new inquiry, however, she came under scrutiny herself and was then sacked by email while on medical leave after a car accident while she was working in Indonesia. "When I think back, I still reel from the shock of opening that email," she told *The Times.*

She found work in another UN unit but that was later abolished and her employment was terminated again. Ms Hunt-Matthes took a case against UNHCR, alleging that her treatment was retaliatory and vindictive.

It came before the UN disciplinary tribunal, the organisation's international internal court, in 2013. Despite being refused funding for legal representation, Ms Hunt-Matthes was supported by a colleague and won her case.

The tribunal found that her dismissal amounted to retaliation. It also ruled that the UN ethics office had failed to protect her when she had done her duty by reporting suspected misconduct.

However, UNHCR appealed on a technicality and the judgment was overturned in 2014. At the time of that decision to appeal, the high commissioner for refugees was António Guterres, who is now UN secretary-general.

Ms Hunt-Matthes said: "I wanted to get on with my life. Instead it was ordered that the case was rerun from scratch. It impacted on my health."

Four years later the case came back to the tribunal for trial but at the start of proceedings the two sides reached "a mutually satisfactory settlement."

The joint statement said: "It is a matter of regret that these issues and the lengthy delays have impacted upon Ms Hunt-Matthes's employment and personal life."

Ms Hunt-Matthes is barred from discussing the terms of the settlement but said: "The UN justice system needs to be placed entirely outside the purview of the UN, which cannot be at the same time party and judge."

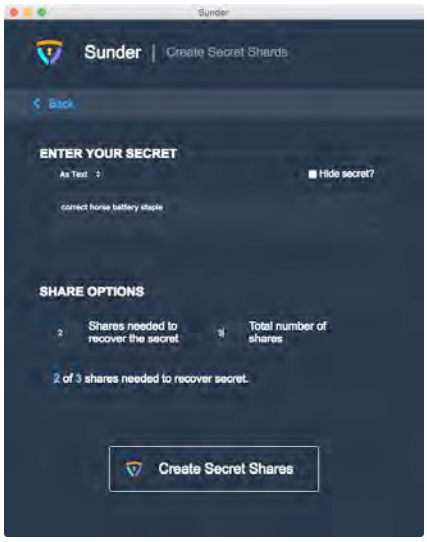
Sunder app helps whistleblowers share info with the media

Lucian Armasu
11 May 2018

THE FREEDOM OF THE PRESS FOUNDATION has released a new tool for macOS and Linux called "Sunder" that whistleblowers, activists, journalists, and even filmmakers can use to disclose secret information to the public when certain conditions are met.

Divide and conquer

The idea behind Sunder is that a whistleblower can share secret information with multiple parties (such as media entities), but that information would only be revealed when his or her conditions are met and when most of the parties involved agree to share the information.



Sunder makes use of an old algorithm called Shamir's Secret Sharing, which allows someone to divide a secret into multiple parts. Therefore, the risk of divulging the secret too early or having someone steal it is virtually zero, unless the attacker can steal all the secret's parts from everyone else, too. Those who hold the secret parts still need to secure them as best as they can to minimize that risk.

Merging the parts together and reconstructing the secret also doesn't require everyone in the group to agree to it, but only a majority. For instance, 5 out of 8 could agree to recreate the secret and then disclose it to others. This avoids the issue where if the original secret holder is no longer alive, for instance, one or more media entities can't agree to no longer share his or her secret, thus putting the whole information disclosure process in danger.

The Freedom of the Press Foundation also said that Sunder can be used not just by whistleblowers, activists, and journalists, but also filmmakers who need to keep terabytes of footage

secure against leaking or accidental disclosure.

Keeping secrets safe

The secret itself could be the password to an encrypted thumb drive, social media credentials, an encrypted archive's passphrase, the private key used to log into a server, and so on.

Sunder is still "alpha" quality right now, and it hasn't been audited, which means you shouldn't be using it other than to test it right now. Sunder uses the open source "RustySecrets" library, which is an implementation of Shamir's Secret Sharing algorithm in the memory-safe Rust programming language. That means there is also much lower risk of being hacked due to bugs in the code.

The team behind Sunder wants to hear your feedback on the tool, and has prepared a survey for users who download and use it.

Whistleblower Chelsea Manning calls for radical transformation of society

The Canadian Press, 25 May 2018

MONTREAL — Chelsea Manning, the former U.S. soldier who became famous after she was imprisoned for passing government documents to Wikileaks, is calling for radical changes to the American military and police forces.

The time for incremental change was in the 1970s, she told journalists at Montreal's C2 technology conference.

What is needed today, Manning explained, is to "aggressively push back" against what she called an authoritarian state.

Manning, 30, was a former Army intelligence analyst who served seven years in a U.S. prison until then-President Barack Obama commuted the sentence in 2017.

Known as Bradley Manning at the time of her arrest, she came out as transgender after her 2013 court martial and has become an activist for trans rights, gender equality and the ethical development of technology.

While much of her 30-minute discussion with reporters centred on securing personal data and the importance of a technology code of ethics, she also talked about her desire to change the U.S. "system."

"The world that I feared in 2010 would exist … has really played out and accelerated in its development when I was (in prison)," she said. "You see the intensity and the aggressiveness and the real authoritarian police forces that we have in the U.S. and how normal that is.

"It looks like a U.S. military occupation."

Before she joined the military, Manning was homeless for a few months in Chicago. She was optimistic at having a stable job when she enlisted and was stationed in Iraq. But she soon became disenchanted with the way her country conducted itself in the Middle East.

Her time at war drove her to leak hundreds of thousands of classified documents to the whistleblowing website Wikileaks.

"This pattern, being homeless, being in the military, experiencing war, then prison — both in solitary and general population — seeing all these things made me realize how ubiquitous and systemic these problems are," she said.

"And we can't tweak little things. The time for reform was 40 years ago."

She didn't go into detail about how citizens could overthrow the "authoritarian" state, and she wouldn't speak either about her decision to seek the Democratic Party nomination in Maryland for the US Senate.

Her platform includes closing prisons, freeing inmates, eliminating national borders, restructuring the criminal justice system and providing universal health care and basic income.

James Comey's memos reveal the reasons Donald Trump wants to find leakers and put reporters in jail

James Risen

The Intercept, 23 April 2018

BY NOW, it is well known that Donald Trump wants to jail reporters in order to force them to reveal their sources. "They spend a couple of days in jail, make a new friend, and they are ready to talk," Trump told former FBI Director James Comey, according to a memo Comey wrote after a conversation between the two men in February 2017.

The Justice Department turned over this memo, along with others Comey wrote about his meetings with Trump before he was fired last year, to congressional leaders last week. The memos were leaked almost immediately. Republicans in Congress apparently wanted them out in order to attack Comey. While they don't make Comey look particularly good, they generally make Trump look worse.

Just as the Comey memos were being published, former *Forbes* reporter Jonathan Greenberg supplied further proof that Trump has been obsessed with how he is portrayed in the press for as long as anyone can remember. Greenberg dug up a 1984 audiotape in which Trump pretended to be someone else in order to try to convince *Forbes* to include Trump on its roster of the wealthiest Americans. Greenberg says that Trump called him claiming to be an aide named John Barron, hyping the value of Trump's assets in order to get him on the

Forbes 400 list. (The *Washington Post* has separately reported that in his dealings with the press in the 1980s, Trump often pretended to be a purported Trump spokesperson named John Barron, a man who didn't exist.)

Trump is clearly addicted to attention and fixates on every detail of his public image. As a corollary, he wants to punish journalists who cast him in a negative light or reveal things that he would rather not be widely known.

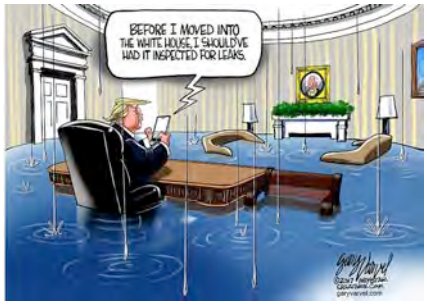
But there is a vast difference between the leaks that Trump usually decries on Twitter — such as an aide or confidant chattering to a reporter about the embarrassing details of Trump's own behavior — and the kind of leaks that lead to criminal prosecutions. The latter has nothing to do with personnel moves at the White House; instead, they involve disclosures of classified information about national security programs and operations.

To be sure, the Comey memo shows that Trump is sometimes upset about leaks that probably do involve classified information — but only to the extent that the leaks also involve Trump or people close to him. Comey described Trump's anger about the leaks of transcripts of his phone calls with the leaders of Mexico and Australia. Trump also groused to Comey about leaks relating to a call between former national security adviser Michael Flynn and "the Russians." But Trump made it clear that he cared about the Flynn leak because he was sensitive to accusations of collusion between the Trump camp and Russia. Comey wrote that after complaining about the leak of the Flynn phone call, Trump immediately said that the call "was not wrong in any way (he made lots of calls) but that the leaks were terrible."

So far, though, the only two people who have actually been charged with leaking since Trump became president have not been accused of revealing anything directly related to Trump himself. Reality Winner, a National Security Agency contractor, was arrested last year and charged under the Espionage Act for allegedly leaking an NSA document about Russian hacking of U.S. voting systems. Terry J. Albury, a former FBI agent, was charged in March with two counts related to the unauthorized disclosure of national security information, according to documents filed by the Justice Department. Albury pleaded guilty last week to sharing the documents with the press, in what his lawyers described as "an act of conscience."

Both Winner and Albury have been accused of providing classified information to *The Intercept*. In a statement when the charges against Albury were made public, Betsy Reed, *The Intercept*'s editor-in-chief, said: "We do not discuss anonymous sources. The use of the Espionage Act to prosecute whistleblowers seeking to shed light on matters of vital public concern is an outrage, and all journalists have the right under the First Amendment to report these stories."

The Winner and Albury cases are the first fruits of Attorney General Jeff Sessions's attempts to placate Trump by aggressively targeting leaks and prosecuting leakers. The Justice Department has said that it has many more leaks under investigation. But will these national security-related leak prosecutions satisfy Trump? They almost certainly won't put a stop to leaks of unflattering information about Trump himself.



Many others in Washington's political and government elite likely welcome these prosecutions, however. In the same memo that documents Trump's desire to jail reporters, Comey, lately a darling of the press, described falling all over himself to support the president's general view, noting: "I tried to interject several times to agree with him about the leaks being terrible, but was unsuccessful."

President Donald Trump shakes hands with James Comey, director of the Federal Bureau of Investigation, during a reception in the Blue Room of the White House on January 22, 2017 in Washington, DC. Photo: Andrew Harrer/Pool/Getty Images

According to the memo, Comey tried to educate Trump on the importance of keeping national security information secret. "I then explained why leaks purporting to be about FBI intelligence operations were also terrible and a serious violation of the law," Comey wrote. "I explained that the FBI gathers intelligence in part to equip the President to make decisions, and if people run around telling the press what we do, that ability will be compromised. I said I was eager to find leakers and would like to nail one to the door as a message."

When Trump mentioned jailing reporters, referring specifically to former *New York Times* journalist Judy Miller, Comey wrote: "I explained that I was a fan of pursuing leaks aggressively but that going after reporters was tricky, for legal reasons and because DOJ [Department of Justice] tends to approach it conservatively." Comey then reiterated his point about leakers, saying he saw the "value of putting a head on a pike as a message." When Trump again advocated jailing reporters and made his sick joke about what might happen to them in detention, Comey wrote that he laughed at the idea.

Jill Abramson, my friend and former editor at the *Times,* is rightly as outraged by Comey's laughter as she is by Trump himself who, as she notes,

"always manages to exceed our low expectations." "This exchange chilled my blood," she wrote in *The Guardian,* calling it "simply nauseating."

The Comey-Trump exchange shows how fragile press freedom is in the United States today. These two men disagree about many things, but they share a desire to punish whistleblowers and the reporters who, in a democracy, seek to shed light on the hidden actions of government.

At times like this, it's worth remembering where we started. "The people are the only censors of their governors," Thomas Jefferson wrote in 1787, adding that the way to prevent abuses of power "is to give [the people] full information of their affairs thro' the channel of the public papers, and to contrive that those papers should penetrate the whole mass of the people. … Were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter."

Whistleblower advocate: large awards can undermine public's confidence in process

John Breslin
Legal NewsLine, 31 May 2018

A LEADING ADVOCATE for whistleblowers has warned that the large bounty rewards involved following settlements has the potential to erode public confidence for the practice.

Overall, it is the best of times and the worst of times for whistleblowing, according to Tom Devine, legal director for the Government Accountability Project (GAP), an advocacy organization.

"There has been a legal revolution at federal level in Congress," Devine said. "Whistleblowing rights have been reaffirmed, and that is completely revolutionary."

But Devine, who has been the business of advocating whistleblowing rights for 40 years, cautions that the sometimes huge sums involved can have an impact on public confidence.

"Morally, there is nothing the matter with commercialization of the whistleblower if the cover-up is threatening society," Devine said. "What is wrong with getting money if you are risking your professional life?"

But Devine is wary that the large amount of money involved could undermine confidence with whistleblowers and their actions. This is particularly sensitive for his organization as it is involved not just in legal issues but also public advocacy campaigns.

There is also the issue of the large sums that go to lawyers, up to 30 percent of the total money awarded to the whistleblower.

And this is embedded in the Dodd-Frank whistleblowing measures, which allow complete anonymity throughout the whole process largely because the reporter [whistleblower] must have a lawyer.

Under the False Claims Act, that anonymity only remains while the federal government investigates and any claims are still under seal.

While Devine is a strong supporter of the Dodd-Frank legislation, he still believes the False Claims Act is a much more effective vehicle for reporting bad practices.

While the tide has changed in recent years in favor of whistleblowing, with 79 percent of the public believing in stronger rights, this creates its own problems, according to Devine.

"It is more dangerous because whistleblowers are a greater threat than ever before," said Devine, adding that those who do come across wrongdoing will ask whether it is safe at a time when the rates of retaliation, including suits, against employees is increasing.

"It has the power to make such a difference," Devine added.

Much of the whistleblowing under the False Claims Act relates to a monumental amount of health care fraud.

The National Heath Care Anti-Fraud Association estimates that health care fraud costs the country close to $70 billion annually.

According to the U.S. Department of Justice, some $3.4 billion relates to whistleblower, or qui tam suits, while whistleblowers were awarded $392 million last year in 2017, down from $519 million the previous year. There were 669 qui tam whistleblower lawsuits filed in 2017 down from 702 the previous year.

More than 2,000 health care providers have been charged in connection with Medicare fraud alone over the last 10 years.

Under the Dodd-Frank legislation, the U.S. Securities Exchange Commission (SEC) reported to Congress that during 2017, whistleblower awards of nearly $50 million were made to 12 individuals.

But that amount has already been surpassed this year as the SEC announced in March that two whistleblowers were jointly awarded nearly $50 million award and a third received more than $33 million.

"These awards demonstrate that whistleblowers can provide the SEC with incredibly significant information that enables us to pursue and remedy serious violations that might otherwise go unnoticed," Jane Norberg, chief of the SEC's Office of the Whistleblower, stated in a March press release. "We hope that these awards encourage others with specific, high-quality information regarding securities laws violations to step forward and report it to the SEC."

Lawsuits can also be filed under similar state laws, and some of these are being engineered by shell companies, according to a 2015 report in the *Wall Street Journal*.

And one of those was involved in setting them up was Harry Markopolos, who became famous for warning about Bernie Madoff long before the Ponzi scheme was publicly unmasked.

The paper reported that the Delaware-registered companies, Associates Against FX Insider Trading and FX Analytics, were formed shortly before bringing suits in Virginia and California. Investigations are ongoing in those and other states into whether banks used foreign exchange pricing to the detriment of customers.

Conference and annual general meeting

Conference
Saturday 17 November 2017
8.15am for 9am

Speakers

to be announced

AGM
Sunday 18 November 2017
8.15am for 9am

Venue Uniting Church Ministry Convention Centre on Masons Drive, North Parramatta, Sydney

Getting to the venue from Parramatta railway station. Go to Argyle street, on the south side of the station. Find Stand 82, on the station side of Argyle Street. Catch bus M54, at 7.48am, 8.07am or 8.26am or 655 at 8.20am. Ask the driver to drop you off at Masons Drive. Then, it's 2–3 minutes walk, on your left. Check https://transportnsw.info/ for other options.

Non-members $65 per day, includes lunch & morning/afternoon tea. Optional $35 extra for dinner onsite 6pm Saturday night

Members $45 per day
This charge will be waived for interstate members.

Optional dinner onsite 6pm Saturday night: members $25

Bookings
Notify full details to treasurer Feliks Perera by phone on 0410 260 440 or at feliksfrommarcoola@gmail.com or president Cynthia Kardell (for phone/email see below under enquiries).

Payment
Mail cheque made payable to Whistleblowers Australia Inc. to the treasurer, Feliks Perera, at 1/5 Wayne Ave, Marcoola Qld 4564, **or**
pay Whistleblowers Australia Inc by deposit to NAB Coolum Beach BSB 084 620 Account Number 69841 4626 **or**
pay by credit card using PayPal to account name wba@whistleblowers.org.au (our email address). Use your last name/conference as the reference.

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Membership subscriptions for the financial year 2018–19 are due now. Please find the enclosed subscription renewal form.

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WBA conference and AGM

This year's conference will be on Saturday 17 November and the annual general meeting on the 18th.

See page 19 for details.

Why should future whistleblowers believe they will be safe?

Nils Pratley
The Guardian, 21 April 2018

JES STALEY, the chief executive of Barclays, had already conceded he made "a mistake" in attempting to unmask a whistleblower in 2016, so the regulators' verdict on the affair counts as a big win from his point of view.

The Financial Conduct Authority and the Bank of England's Prudential Regulation Authority found Staley breached rule two of their conduct code — the one about acting with "due skill, care and diligence" — but cleared him of a higher rule-one offence relating to lack of integrity. Censure on the latter test would have killed his career at Barclays.

Staley has the backing of the bank's board and can fully expect to be re-elected by shareholders at next month's annual meeting. When his fine and penalties — from the regulators and Barclays itself — are added up, he may find himself poorer by the thick end of £1m but he is rich enough to pay. The rest of the Barclays board will also be relieved. The verdict from the FCA and PRA, in effect, endorses the findings of the bank's internal investigation.

A just outcome? It's impossible to say until the FCA and PRA publish their formal notice with the blow-by-blow account of what happened, which must wait until Staley has had 28 days to respond to the draft findings. But that document is critical to understanding where regulators draw the line between mere incompetence and lack of integrity.

On the details we know so far, Staley's actions had spectacular consequences. Barclays' security team leaned on contacts at the US Postal Service to review CCTV footage to try (unsuccessfully) to identify the author of an anonymous letter to Barclays' board.

In the first big test of the whistleblower regime, a chief executive who tried to identify an individual has been allowed to keep his job. Why should future whistleblowers believe they will be safe? The FCA and PRA need to explain a decision that looks as soft as it could possibly have been.

Whistleblowers Australia membership

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

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

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

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