

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



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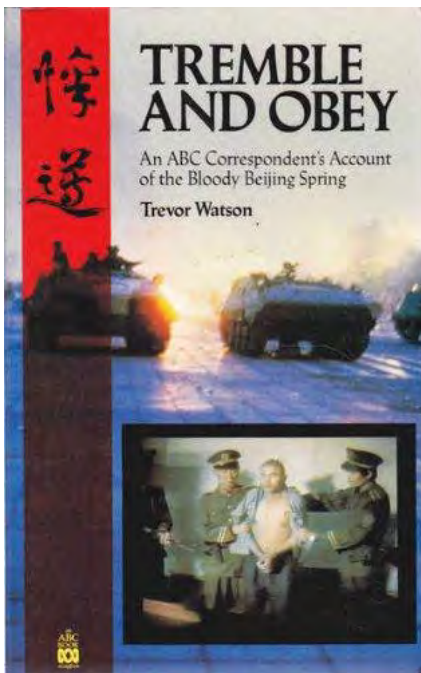


Solicitor Bernard Collaery (pictured) and his former client Witness K are being prosecuted for exposing a secret Australian government operation to spy on Timor-Leste.

### It's not like that here. No tanks, but plenty of rackets

Cynthia Kardell

ON MONDAY 3 JUNE, the ABC Four Corners program “Tremble and Obey” went to air with a trove of never-before-seen footage of events thirty years ago, in the centre of China’s communist capital, when hundreds of thousands of students and citizens staged weeks of protests calling for democracy. The students and their fellow protestors stared down their government in the full gaze of the world’s media. The Chinese Communist Party leadership was in utter turmoil, as hardliners battled for control of the party. They won. Then, the People’s Liberation Army turned its guns, and its tanks, on its own people — turning them into pie, in piles, before setting them alight.



ABC foreign correspondent John Gittings summed it up this way: “When a government uses tanks to declare war on its people, anything is possible, and the people now know it.” Every year since those events, a pre-June 4th crackdown by the Chinese Communist Party terrorises the people anew, in case they forget the lessons of the bloody military suppression of peaceful un-

armed protesters and residents of Beijing and other cities on June 3–4, 1989.

On the anniversary this year China broke its silence on the world stage, when its foreign minister unflinchingly described “the incident” as a “necessary correction to stop political turbulence.”

I hear you say, “What on earth has this to do with us? It’s not like that here.” Well you’d be right. The idea of using tanks is so outrageous, you’d be ridiculed for even saying it out loud! Riot police maybe, but they’d deserve it, right? Or that’s the line we’d be encouraged to take. We cling to our trust in “elected” government, so we cut our governments slack even when we shouldn’t for fear of what might be. We reassure each other with things like, “We can always vote them out.” But do we? No, we don’t.

It will always be about what government — elected or not — can get away with. In China, people are *not allowed to forget* what the government *will do* to stop political turbulence. We don’t know yet how far our governments might go to stay in power, but are we witnessing something that should make us fear not doing more to hold it back?

On the Friday before the Four Corners program, the UN Special Rapporteur on torture, Professor Nils Melzer, told reporters that after “20 years of work with victims of war, violence and political persecution [he had] never seen a group of democratic States ganging up to deliberately isolate, demonize and abuse a single individual for such a long time and with so little regard for human dignity and the rule of law.” And he wasn’t just referring to the government officials. Watch the way major publishers and others that claim to have the inside running, are now closing ranks against Julian Assange. No messy tanks required here!

You’ll recall how delighted Donald Trump was with WikiLeaks when it published Hillary Clinton’s national campaign files. Not anymore! Trump has a much bigger target in sight — free speech — and all that unwanted political turbulence!

With espionage charges Julian Assange is facing the prospect of 175

years in gaol. And here, in Australia the ever so earnest Richard Boyle from Adelaide is facing 161 years for gathering the evidence that proved his claim that the ATO had illegally directed its staff to garnishee personal bank accounts without first establishing there was a debt owing. His story was featured in the ABC’s “Australian Story” before the Four Corners program “Tremble and Obey.” I heard later that he will plead not guilty.



Nils Melzer

And then there’s our government, which is desperate to stop us trying to hold them to account for illegally bugging Timor L’Este’s Cabinet room in 2004, as the new state was seeking to negotiate the maritime boundary with the Howard Government. The bugging was a sneaky illegal act of bullying to gain an advantage over the new state’s attempts to draw earnings from the Greater Sunrise oil and gas field.

In October last year, senators Tim Storer, Rex Patrick, Nick McKim and MP Andrew Wilkie wrote to Margaret Stone, the inspector general of intelligence services (IGIS), asking her to investigate whether the Australian Security Intelligence Service (ASIS) broke the law by carrying out the bugging. Outrageously, the Government claims it was acting in our national interest, but it is so rattled, they’ve got the court to agree to hearing the criminal charges against two men who exposed its crimes, Witness K and Bernard Collaery — in secret! It comes

back to court in August in the ACT Magistrates Court.

What's clear to me is that our government has learnt how to deceive, even frighten us into accepting its crimes, so it is way past time to call it out!

The government let 14 years go by before criminally prosecuting whistleblower Witness K and his lawyer Bernard Collaery in June last year. Last year criminal charges were also laid against former Defence lawyer David McBride, who was arrested for the 2017 release of material exposing the alleged civilian killings by Australian special forces in Afghanistan (the "Afghan Files").

So, if you are in any doubt that there is a push on — for society to accept greater government secrecy and control under the lie of national security interests — think again.

On the anniversary of the Tiananmen Massacre the Australian Federal Police (AFP) raided the home of political editor Annika Smethurst concerning "a report published in April 2018 revealing that the departments of Defence and Home Affairs were considering new powers, allowing Australian citizens to be monitored for the first time. Her original article "included images of top-secret letters between Home Affairs Secretary Mike Pezzullo and Defence Secretary Greg Moriarty."



Annika Smethurst

On the same day 2GB Drive presenter and Sky News contributor Ben Fordham revealed "he was the subject of a probe over his story yesterday about six asylum seeker boats attempting to reach Australia."

Soon after, the AFP were "crawling through the headquarters of our national broadcaster. Accessing private emails. Scouring hard drives. Rounding up

handwritten notes. They have the power to collect, decrypt, alter and delete whatever they want" reported John Lyons, ABC journalist, live on Twitter.

The AFP is reportedly looking for any communications the ABC had with whistleblower David McBride. Why, you'd have to ask, because McBride has already admitted he is the source of the Afghan Files? Unless the ABC is the real target and the Annika Smethurst raid was a strategic decoy?

And finally, there's the government's tacit support of Trump's abuse of WikiLeaks journalist Julian Assange as a proxy for Trump's war on the free media.

But let's take stock, because the common denominator in all of these events is the misconduct of government and or its agents and whether it is anyone's business, but theirs! Consider these well-established incidents.

1. In 2004, government agency ASIS illegally bugged Timor L'Este's Cabinet: then charged Witness K and Bernard Collaery in 2018 to pressure Timor L'Este into a deal to process their gas through an existing Conoco-led LNG plant in Darwin (Timor L'Este's prime minister, Xanana Gusmao). This is ongoing.



2. The ATO directed its staff to break the law. The ATO conceded the facts, but not the intent and withdrew the policy.

3. The government initially lied when asked about secret plans to spy on its citizens: it was all false, a nonsense! But when their documents were splashed across the front page of the *Daily Telegraph*, the story changed. They wanted us to believe (the idea) was dismissed out of hand. So, they're the good guys, right? Well no! Now that the AFP has got them back, I suspect they're quietly confident that journalist Annika Smethurst never knew the whole story, so they're back to banging

the drum about the potential damage to our national security.

4. The government's handling of the recent offshore processing of twenty Sri Lankan asylum seekers is in breach of international law *in our name*, but apparently, it is not any of our business. The government classifies its records secret to keep it that way, unless and until it suits their political purposes. (Ditto the "medevac" leaks in the lead-up to the Wentworth by-election last year.)

5. The government agency cover-up of claims that Australian soldiers had killed civilian children in 2017 in Afghanistan was driven by an institutional shift in culture, effectively condoning the killings under cover of the lie that our national security is at stake.

On 6 June Minister Peter Dutton said on radio that the issue regarding the AFP raid on the ABC is the release of classified documents. Well, he would say that. But are we going to let it lie there? Because make no mistake, the Attorney General Christian Porter had to decide whether to consent to the prosecutions — because it's our money!

He gave the go-ahead, but in this the Attorney General has got it badly wrong. The public's interest is best served by encouraging whistleblowers and government transparency and accountability in line with the purposes of the Public Interest Disclosures Act 2013. It is not served by what looks and smells like political retribution for exposing its failure to investigate, rectify and openly report on the claims made public by the media.

His decision is unconscionable and an abuse of our right to know and pass judgment on what government does in our name. This is why Christian Porter must immediately withdraw his consent to the criminal prosecution of Witness K, Bernard Collaery, Richard Boyle and David McBride — who clearly, have a much better understanding of what lies in our, the public's, interest.

By any measure, none of the information made public by the whistleblowers ever had the capacity to damage our national security or interests or the proper workings of government, however you might define



it. I suspect that that is more often the case than not. The Attorney General's decisions raise real questions about how we classify material and whether over time there has been a steady and deliberate bracket creep, as the benefits of increasing secrecy became — shall we say, more attractive — as the demands of greater openness and transparency grew. I'm thinking here about the freedom of information laws in the 1970s. Forty years on, the user-pays principle and its successors have allowed any right we may have had to be deliberately whittled away: all part of the great neoliberal project. Fanciful? I think not.

And objectively — as the law stands — the information exposed by the whistleblowers only ever had the capacity to force the government and its agents into more lies, because of the self-serving, often illegal decisions, already taken by the government and or its officials. Is that a bleak picture? Yes, it is, because that secrecy is now so pervasive, it is threatening the freedom of the press and expression and democracy itself. Honesty has never been so hard to come by.

On Tuesday 11 June Minister Peter Dutton revealed he had “counselled” his agency head Mike Pezzullo, about him “counselling” independent Senator Rex Patrick about his press statement that he and his boss Peter Dutton “hate media scrutiny.” You couldn't make it up, I was thinking, as Peter Dutton took the opportunity to trash Rex Patrick's character. But if Peter Dutton thinks he can break the links that bind, he is kidding himself. It only serves to emphasise the extent to which our public service has been politicised to keep those secrets firmly in the cupboard, by ensuring retribution for those who break ranks. This is not the first foray into politics for Mike Pezzullo. And both men forget, the Senate's role is to hold them to account for their actions.

Government members and some journalists have also been quick to raise other leaks from across the Chamber, as if somehow that makes the raids alright. All too often, we let them get away with it. Well, it's not alright. Lies and hypocrisy never are. And it is absolutely not alright for laws to be for some, part of the club, but not for

others! Particularly when that club is making the laws.

Here's the thing. Open your mind and turn the whole thing around. Because if we truly want transparency and accountability in government, we need to punish the lies, hypocrisy and wrongdoing exposed by the leak, but not the leaker. Now before you jump on me, to say what about vexatious leaks. Well, we have laws for that, but not for those within the “club.” At the moment that “club” operates like a protection racket, with some outsiders seriously under threat of losing their liberty.

This is not alright. Which is why we desperately need a public interest defence to exempt whistleblowers and journalists from criminal prosecution for gathering the evidence of wrongdoing, disclosing the wrongdoing where that wrongdoing is not investigated or dealt with adequately and or where the party bringing the prosecution is implicated in the wrongdoing or in its cover-up. And why the prosecutions against Witness K, Bernard Collaery, Richard Boyle and David McBride must be withdrawn.

The government hints at the possibility of a legislative review of the procedural anomalies arising out of the raids, but we shouldn't be satisfied with that. Play that game — and that's what it is — we'll find out it operates like a reverse auction. Instead we have, to push unequivocally for greater protections and exemptions for journalists and whistleblowers to be legislated later this year. That's the bottom line. And at the same time for constitutional or other legislative change to enforce the freedom of the media and our expression. We also need to find new ways to deliver more democracy — not less — to allow the ‘people’ to hold government members to account for their actions at the time, not just at elections. We have tended to sit on our laurels since the Berlin wall came down, thinking the western democracy project done and dusted. Plainly, it is not. It is, and always will be, a work in progress. So, look to others like the Scandinavians, for ideas about what can be done and start thinking — hard.

Cynthia Kardell is president of Whistleblowers Australia.

## Courage without mateship II

Kim Sawyer

UNLIKE FILMS, whistleblowers are not supposed to do sequels. But sometimes they do. I was involved in two whistle-blowing cases. To paraphrase the words of Lady Bracknell in Oscar Wilde's *The Importance of Being Ernest*, “To blow the whistle once may be regarded as a misfortune; to blow the whistle twice looks like carelessness ... or at least naivety.”



Maggie Smith as Lady Bracknell

While I was and still am reluctant to be a serial whistleblower, there seems to be more reason to blow the whistle today than when I first blew the whistle in 1992. Our society is now so underwritten by money and so dominated by self-interest that whistleblowing has become more necessary than ever. But who is listening? Corruption is pervasive. We have converged to a world where a Federal politician can spend more time in the Philippines than in the House of Representatives yet still stand for re-election; where a President can tell 10,000 lies in the first two years in office yet still have an approval rating of 40%; and where foreign students can pay fees of \$150,000 for a three-year undergraduate degree at an Australian university and no one seems to question why. Australia is very different from when Whistleblowers

Australia was founded. Most Australians think it better. Most whistleblowers would disagree. It is a divergence explained by experience. We are pushing the public interest against a tide of self-interest.

Brian Martin's article "Myth or operational code?" in the April issue of *The Whistle* galvanised what I think and many whistleblowers think. The legislative framework established to protect whistleblowers is mainly window dressing. It ticks boxes for politicians and regulators but not for whistleblowers. Whistleblowing legislation is designed for the marginal rather than the systemic problem. Systemic corruption is reserved for royal commissions ... until the next royal commission. We need to look back and ask why. Why was a separate Public Interest Disclosure Agency (PIDA) as recommended by the 1994 Senate Committee never established? Why did it take twenty years for federal whistleblowing legislation to be enabled? Why has it taken this long for a National Integrity Commission to be considered? Why have there been so few prosecutions for retaliation against whistleblowers in Australia? Why do we not have a False Claims Act as in the US? Recently I attended a presentation by the Commonwealth Ombudsman. I asked him about whistleblowing. He indicated that it was still work in progress. We may have progressed but we continue to accept the unacceptable. What will it take to change the culture? Let us hope we know one day.

In 2004 I wrote a paper entitled "Courage without mateship" for WBA's whistleblowing conference in Melbourne. In preparing this article I revisited that paper and noticed my thoughts were the same ... except multiplied ten-fold. In "Courage without mateship" I attributed the emergence of whistleblowing to five factors.

- i. Money.
- ii. Corporatisation where public institutions have become like corporations.
- iii. Complexity where regulators cannot regulate without insiders.
- iv. Bystanders who see but don't act.
- v. Networks which protect mates rather than merit.

Money, corporatisation, complexity, bystanders and networks write the whistleblowing script. Let me revisit these with the benefit of fifteen further years.

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Money may not be the root of all evil but it sure comes close. The problem with money is that it changes the way we look at things. The material becomes more valued than the spiritual, the tangible more than the intangible, the paid consultant more than the one who gives free advice. The most important things in life can never be monetised. The problem for whistleblowers is that truth and fairness are not priced. The problem for whistleblowers is that falsity, nepotism, bullying and retaliation are not costed. The problem for whistleblowers is that the benefits we confer are not put into dollars. Transparency International and other agencies estimate that corruption costs the typical firm 5% of revenue. Extrapolating to the economy as a whole results in an estimate of the cost of corruption for Australia of more than \$50 billion every year. An Australian False Claims Act would provide an estimate of the benefit of whistleblowers in a way others may understand. A False Claims Act was overdue in 1994. And it is even more overdue now.

When I first blew the whistle, universities were becoming businesses. When universities became corporations the values of scholarship were replaced by the values of the market. The old university was a centre of learning. The assets were intellectual not physical, the return was on ideas not assets, and the language was of ideas not management. Right and wrong were determined by academics rather than codes of ethics; governance by collective decision making rather than a CEO. Like so many of our institutions, universities became corporations. Like so many I was caught up in the transition.

The problem with corporatisation is line management. Line management protects those higher up the line. When a worker blows the whistle on a super-

visor, they have to disclose to someone closer to the supervisor than to them. Internal auditors defer to senior management and external auditors often do the same. The Senate Committee in 1994 found that the main problem for whistleblowers was getting regulators who were not captured by those they regulate. Whistleblowers are independent regulators but we need someone to empower us. Perhaps there should be a person on every governing body who can receive complaints but who is not answerable to the governing body; for every institution to have its own ombudsman reporting to the State Ombudsman. Independent regulation is more of a problem than in 1994. Line management has made it more problematic.

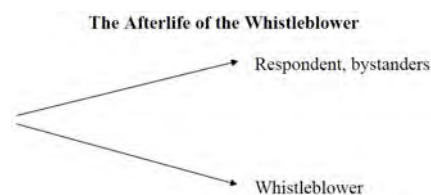
Our society has become too complex for most of us ... and for regulators. We are information-rich but poor at joining the dots. Whistleblowers provide the red flags on corruption but regulators often fail to act. The history of royal commissions in Australia is a history of poor regulation where red flags are ignored, as illustrated by the Banking Royal Commission. Regulators must adopt a red flag approach and join those flags. A False Claims Act would help because it would establish precedents. But it would also help if regulation were more transparent. Regulators should require institutions to have websites with a governance section documenting their whistleblowing cases. We need to be able to look at an institution and see its full history. We need more transparency. We need to see more.

When I first appeared at the Senate inquiry in 1994, I offered this view of whistleblowing.

The exercise of whistleblowing is akin to removing a cancer growing in a public institution. The whistleblower identifies the cancer, attempts to remove it, and then is attacked by it. Unlike others who fight a cancer, the whistleblower receives little support from bystanders.

At that hearing I suggested bystanders were like accomplices. The maxim "evil prevails when good people do nothing" has never been more relevant. It is evidenced in the Republicans underwriting Trump; the regulators who did not act prior to the Banking Royal Commission; and it is crystal-

lised in whistleblowing. Whistleblowing is a story of bystanders converging to the position of wrongdoers. In 1995 Jean Lennane (then president of Whistleblowers Australia) introduced the concept of the gap between the career path of whistleblowers after they blow the whistle and the career path of those on whom the whistle is blown (respondents). It is the one of the best measures of corruption. And bystanders are part of the problem as shown in the diagram below.



The diagram sums up what has happened to whistleblowers over the last 30 years. Most have changed careers. Most have been at significant disadvantage relative to those on whom they blew the whistle. Most have been at significant disadvantage to the bystanders who did nothing. The Senate Committee in 1994 recommended a National Whistleblowing Advisory Board that included whistleblowers. It never happened. Regulators use our disclosures but don't protect us from the discrimination that follows. We remain outsiders. Bystanders understand. How do we incentivise bystanders to do something? One possibility is Good Samaritan laws like those which followed the 1963 Kitty Genovese case in New York. We should protect bystanders who support whistleblowers as much as we protect whistleblowers. But another possibility is to prosecute those who do not act. Whistleblowing legislation must deal with the bystander problem for it explains why whistleblowers do not prevail.

Whistleblowers are not networkers; they blow the whistle on networks. Vince Neary, Karl Konrad, Debbie Locke, David Rindos and Mick Skrijel blew the whistle on networks of corruption. Australia is more networked today than in 1978 when Mick Skrijel first blew the whistle, but the most important networks now are networks of indifference. Journalists are more interested in click bait than the long-term public interest; academics are more interested in citations than speaking out; regula-

tors are more interested in their comfort zone than the long-term. As corruption has grown, indifference has grown. To lie used to be a problem. To lie 10,000 times is now the standard. To register with the public a scandal needs to be bigger than the previous scandal. In one sense whistleblowers have been too successful.

There are two other issues that were not so relevant when I wrote "Courage without mateship." There is greater inequality of wealth and with wealth comes power. Many potential whistleblowers are trapped by their low income and their debt. They cannot afford to blow the whistle. Whistleblowing is a test of the less powerful against the powerful. And the powerful are now more powerful. A second issue relates to belief. Most Australians believe that Australia is the best country in the world, a belief reinforced across the generations. Dissent is for the pub not the workplace. Most have a self-belief, a belief in family, a belief in mates and a belief in a fair go for them. They do not believe there is systemic wrong doing. Whistleblowers are outsiders who dare not to believe. We are the true non-believers.

Let me conclude by reflecting on a book Keith Potter often cited, the 1985 book *A Quarter to Midnight* by Athol Moffitt. *A Quarter to Midnight* concerned organised crime which Moffitt contended had become more widespread than politicians acknowledged. Moffitt should have known. He chaired a Royal Commission into organised crime and was involved in four others. Moffitt maintained the National Crime Authority was a lame duck. He was almost certainly right. *A Quarter to Midnight* was a portent of what Australia was to become. Corruption is now present in most networks and most institutions. We have become inured to corruption. We tolerate corruption. While politicians have legislated to protect whistleblowers, the protection is more for themselves than for whistleblowers. The clock is closer to midnight.

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

"Courage without mateship" is available at <https://www.bmartin.cc/dissent/documents/Sawyer04.pdf>

## BOOK REVIEW

### Learning from trolling

Brian Martin

GINGER GORMAN is an Australian journalist. In 2013, right-wing vigilantes began a horrific campaign of trolling against her. She received extremely abusive and threatening messages. Her personal details, including a picture of her, her partner and child, were posted on a fascist website. She and her partner feared physical assault.

For those who have not experienced online hate, it is hard to imagine how damaging it can be. Many targets retreat into a shell, become continually apprehensive and are unable to do their jobs.

Gorman, unlike others, decided that she wanted to learn more about the trolls who were attacking her and others. Being a journalist, she sought to interview them. She recounts her experiences, and what she learned, in her recent book *Troll Hunting: Inside the World of Online Hate and its Human Fallout*. She also talked with other trolling targets, and with all sorts of experts, including psychologists, police and lawyers, seeking insights. Although the topic has many confronting elements, her treatment is fascinating and engaging.



#### Whistleblowers and trolling targets

Gorman is not a whistleblower in the usual sense. She was not an employee who spoke out in the public interest, and those who attacked her had no



authority over her. But she is certainly speaking out to challenge abuse. Furthermore, the ways she and other trolling targets are treated has many similarities with the reprisals visited on whistleblowers. So it is worth learning from Gorman's investigations.

She aimed to understand trolls better by talking with them. Very few whistleblowers try to set up regular conversations with their bosses and colleagues — the ones who are doing the worst things to them — to ask why they are being ostracised, harassed, transferred, referred to psychiatrists and so forth. Why not? When people come under attack, they are often distressed. Psychologically, they do not feel capable of engaging their attackers, at least not in the calm frame of mind necessary to build a relationship and seek greater understanding.

Despite her revulsion at the actions of trolls, Gorman was highly motivated to figure out what drove them, to understand what they were like. She used her media networks to find out how to contact trolls, and struck up lengthy conversations with a few of them.

They were not at all what she expected.

She expected they would be uneducated and inarticulate. Instead, she discovered they were educated and able to reflect on their own actions.

She expected she would find nothing in common with them. Instead, she found herself sharing many ideas, about movies, politics and culture.

She expected to hate them. Instead, she found that, aside from their trolling, which she continued to detest, that she got along with them reasonably well.

Like any contact with strangers, her relationships with different trolls depended on the individual. Still, she found more in common than she expected, especially considering that she was a middle-aged woman, a feminist, interacting with young white men — they were all men — some of whom were overtly racist.



Whistleblowers might imagine that some of their chief tormenters are nasty, ignorant and hostile. Get to know them, and it might well be that they are not much different than anyone else.

### Psychology of trolls and targets

Trolls might be approachable in some ways, but they had well-developed mechanisms to protect themselves and justify their activities. For protection, most of them carefully hid their true identities. They justified their trolling by believing that they were the actual victims, and anyway they were just exercising their right to free speech. One troll Gorman interviewed was adamant that words never hurt anyone. If people felt offended, then they should just get off the Internet.

The same sorts of psychological dynamics apply in whistleblower scenarios. Managers feel they are the ones under attack: the whistleblower is seen as the aggressor. In taking actions against whistleblowers, managers are just exercising their usual prerogatives. They don't see what they are doing as taking reprisals.

From the other side, the experience is completely different. Gorman tells about the horrific consequences for targets of trolling. Constant abuse is hard to handle and can lead to post-traumatic stress disorder. The abuse often includes threats of harm, including rape and murder, to both the target and family members. Doxxing is the process of putting online information about someone, for example name, home address and phone numbers, and encouraging others to harass them. It's never possible to know whether online abuse and threats might trigger someone to physically attack, which sometimes happens, and this risk leads to continual anxiety and paranoia. Online aggression has offline consequences.

Some targets are so affected that they move house, quit their jobs or stay off the Internet. Quite a few whistleblowers lose their jobs too, so this is another commonality with trolling targets. More generally, trolling campaigns have much in common with reprisals against whistleblowers, the difference being that whistleblowers are usually attacked by people in their workplace whereas trolling targets are attacked by online vigilantes.



Ginger Gorman

### What to do?

Trolling targets often seek assistance from authorities, for example reporting death threats to the police. This is usually a dead end. Few police are well informed and skilled in dealing with online attacks, so they do nothing. Sometimes they say, "Well, don't go on the Internet." But if someone reported an assault on the street, police wouldn't say "Well, don't go outside."

Gorman recounts the failures of laws, regulatory agencies and social media companies such as Facebook and Twitter to effectively deal with online abuse. There are plenty of promises but things don't change much. This is the same experience as whistleblowers who regularly report the failure of watchdog bodies to provide adequate protection.

For many people, the phenomenon of trolling might seem remote. It's not of concern. Because they are not affected, they have no idea that such damaging activities are going on. This is similar to the plight of whistleblowers: unless you've been targeted yourself, or are a close friend or family member of someone who has been, it's hard to appreciate what's involved.

There is a common cause involved here: the need to support people who are the targets of abusive and unfair attacks. Whistleblower support is not all that different from support for targets of bullying, online or offline or both. It is worth thinking how to learn from these different experiences in order to develop better ways to survive and resist.

Brian Martin is editor of *The Whistle*.

### Ex-councillor reveals whistleblower trauma

Judith Kerr  
*Courier-Mail*, 8 May 2019

HE WAS DITCHED from a high-profile council committee, faced retribution in the workplace, online trolling by the gun lobby, suffered health and marital problems and ultimately lost his job.

But 58-year-old former Logan City councillor Darren Power said he would do it all again, despite enduring the most bitter three years of his life.

He was speaking out this week, four days after Local Government Minister Stirling Hinchliffe dismissed all of Logan's 13 elected representatives, nine of whom faced criminal charges.



Darren Power

Although last Thursday's D-Day was a shock, Mr Power said it brought a "degree of relief" tinged with sadness after unceremoniously losing the job he had cherished for more than 22 years.

"When I look over what I've done in my life, I know my experiences have put me in good stead to cover all bases when it comes to council," he said.

"I have been a federal officer; I joined the Australian Army qualifying as a Special Forces Commando earning my Green Beret and parachute wings."

Even though he had careers in combat before joining council, nothing prepared him for the hostile "sniping from the sidelines" within council chambers.

He said he first felt the heat months after the March 2016 local government elections, when he started opposing

overseas trips under the newly drafted Global Connections policy.

In September 2016, he wrote to the state government, concerned the council was overspending on overseas trips with the initial budgeted \$72,000 ballooning after a China trip cost \$70,000 and a US trip \$80,000.

In the first financial year after the 2016 election, council staff visited New Zealand, Asia, US and Germany under the new policy.

Mr Power also said there were staff business trips to Sydney which were not authorised by the full council.

"A number of reports were presented to council which would have allowed the mayor and CEO to approve overseas trips without having to get council approval, which is the current policy," he said.

"A second report was an attempt to change the budgeted amount for the Global Connections policy to \$570,000.

"If that were approved, the travel would have been legitimised and those involved would have been able to continue to spend on overseas travel without having to get council approval.

"For me, it started off as one letter to the minister and then another one and then another one and it just kept going."

In December 2016, the then Cr Power wrote to the Local Government Minister asking him to investigate after "experienced staff have been pushed out the door" over the past six months.

Further letters included details of the appointment of Mr Milner and a company called Nexium, set up the day after the 2016 election.

Mr Power said he also had to endure many of his elected colleagues branding him as a "troublemaker" and publicly blaming him for a downturn in development projects.

Along with his loss of reputation, Mr Power said he also spent a large sum on legal fees.

"Because I was a whistleblower, the council said it would not reimburse my legal fees," he said.

"That all took its toll on my home life and marriage because I spent nights and weekends preparing letters to ministers, reports and statements to the CCC, and affidavits to the Industrial Relations Commission.

"My personality also changed and I was anxious and angry a lot of the time.

"I also lost friends who 'just left' council and after a bit of questioning I found out they were edged out because they had connections with me."

Hostilities within the divided council also spilled over into a working lunch meeting in July 2017.

Logan City Council's 13 councillors were all dismissed last week.

All councillors and the former CEO Ms Kelsey attended the meeting in which harsh criticism was levelled at councillors Power and Lisa Bradley.

In February 2018, a week after CEO Sharon Kelsey was sacked, a committee restructuring resulted in Cr Power losing his position as chairman of the Growth committee.

Mr Power said his hard-line stance against overseas travel sidelined him from taking up the newly designed Economic Development committee, despite seven years chairing the Development, Health and Environment committee, from 1997.

Last week, Local Government Minister Stirling Hinchliffe said the former councillors Power, Bradley, Laurie Koranski, and Jon Raven would be appointed to a board that would help the new administrator Tamara O'Shea.

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### ABC raids expose lack of whistleblower protection

Phil Mercer  
*BBC News*, 6 June 2019

IN STEPHEN SPIELBERG'S political blockbuster *The Post*, a publisher played by Oscar-winning actress Meryl Streep reveals secret and corrupt activities by the US government during the Vietnam War.

At risk are the central character's livelihood, liberty and the future of the *Washington Post* newspaper. The exposé was based on documents from a whistleblower.

David William McBride is no Hollywood leading man, but as the former Australian defence force lawyer charged with leaking classified papers at the centre of Wednesday's police



raids at the Australian Broadcasting Corp (ABC), he has made breathtaking claims against the military and the government.



David McBride

“It is everything like in the movies,” Mr McBride told the BBC. “You are under surveillance a lot and it does get to you.”

He is referring to his fight to air the truth about allegations that Australian special forces were involved in killing unarmed men and children while serving in Afghanistan.

“It is one thing fighting for an army in a war because you have a support group, but as a whistleblower you have none of that,” he said.

“You’re fighting a war on your own and your own sanity is often questioned by yourself and by others. It is a really miserable fight.

“I could see that the [Australian] government had become the worst threat to national security that we faced. They were no longer interested in actually defending the country. They were simply interested in defending themselves.”

#### “They want to put me in jail”

Mr McBride is due to appear at the Australian Capital Territory’s Supreme Court in Canberra on 13 June to face charges of leaking information to ABC journalists.

The information appeared in a series called “The Afghan Files,” published in July 2017. Mr McBride does not dispute that he gave material to the

ABC but insisted he did so in the national interest.

It is a case that has very publicly highlighted Australia’s attitudes to whistleblowers.

“It is one of the great ironies,” he said. “They won’t prosecute the journalist who published the story and they’ve got no intention of doing that, but they want to put me in jail for 50 years.”

The day before Australian Federal Police (AFP) officers raided the Sydney headquarters of the ABC, the case of another high-profile whistleblower was in court.

Richard Boyle exposed abuses inside one of the country’s most powerful institutions, the Australian Tax Office (ATO), including aggressive debt collection practices.

He told the Adelaide Magistrates Court that he plans to plead not guilty to 66 charges. The 43-year old former ATO staff member faces a maximum prison sentence of 161 years if found guilty.

Mr Boyle said he lost his job, suffered a breakdown and chronic insomnia, as well as stress-related heart problems.

#### “Rolls Royce v second-hand ute”

There are legal safeguards in Australia for those who expose malpractice or corruption, but Josh Bornstein, the head of employment law at Maurice Blackburn lawyers, believes they are inadequate.

“When it comes to whistleblower protection Australia is a backwater. Fundamentally Australian culture is hostile to whistleblowers and to those who dob [inform on others].

“They are punished for doing the right thing. In many cases their health collapses and they never work again. We see case after case after case of that in both in the private sector and in the public sector,” he told the BBC.

“The US and Canada both have schemes in place that reward whistleblowers in the private sector, in particular. Those schemes are so good they would allow an employee to anonymously blow the whistle and retain their employment.

“That is a Rolls Royce scheme. In Australia, in comparison, we have a scheme that is akin to a beaten-up second-hand ute.”



Providing compensation for Australian whistleblowers

#### “Increasing authoritarian mood”

Australian Prime Minister Scott Morrison has responded to AFP raids this week on the ABC and the home of a News Corp journalist Annika Smethurst.

Speaking while at D-Day commemorations half a world away in the UK, Mr Morrison said that his centre-right government was committed to freedom of the press but that “no one is above the law”.

“These are matters that were being pursued by the AFP operationally, at complete arm’s length from the government ... not at the instigation of government ministers,” he added.

But there are fears that reporters in Australia are under political pressure like never before.

“I’m not saying this is just about the current government but we have seen an increasing authoritarian mood creeping into the way that the media is handled by the government,” warned Professor Catharine Lumby from Macquarie University, a former press gallery journalist in Canberra.

“Central to the health of a good liberal democracy is a robust media and the protection of freedom of speech. These are principles that unfortunately we are seeing eroded around the western world. I would really hate to see Australia going down that path of intimidating whistleblowers or journalists,” she added.

Meanwhile, Mr McBride, a former British army captain in the Blues and Royals, has said he is prepared for the fight of his life in court.

“I am a well-intentioned, true believer in what I am doing. I think I am right and I think that the government is corrupt,” he said.

“Truth has a real power all of its own. I’ve lost my job and I’ve lost a lot of other things, but I’ve never felt richer.”

## Media raids raise questions

Dennis Muller

*The Conversation*, 6 June 2019

IN THEIR RAIDS on media organisations, journalists and whistleblowers, the Australian Federal Police have shown themselves to be the tool of a secretive, ruthless and vindictive executive government.

Secretive because the extensive web of laws passed under the rubric of national security, on top of the secrecy provisions of the Commonwealth Crimes Act, gives the executive wide powers to classify as secret anything it wishes to hide. As the former investigative reporter Ross Coulthart once memorably said, it could include the office Christmas card.



Ruthless because the stories revealed by whistleblowers and reporters targeted by the AFP and other security agencies have offered accounts of cruelty, misconduct, dishonesty and slyness. These include:

- harm done to the mental health of asylum-seeker children on Manus Island and Nauru
- bugging the East Timor cabinet office as part of an attempt to cheat the Timorese out of their fair share of the Timor Sea oil reserves
- alleged breaches of the rules of engagement by Australian military personnel in Afghanistan
- proposals to intensify domestic spying on Australian citizens.

Vindictive because in the most recent two cases it has taken more than a year after publication for the AFP to take action, revealing how utterly lacking in any real threat to national security the leaks and publications were.

It follows that these raids are a naked attempt to take revenge on whistleblowers and intimidate the journalists who published their stories.

As for the AFP, while it is true they are acting in response to references from other government agencies, it raises questions about the way they exercise their vaunted operational independence.

What weight do they give to how real a threat to national security is posed by any particular leak? What weight do they give to the imperative that leakers be made an example of and journalists be intimidated? Or do they just want to show the rest of the executive branch that they are on the team?

In addition to this question of AFP culture, many interrelated factors have brought Australia to this point — a clear and present danger to freedom of the press.

One is the catch-all nature of section 70 of the Commonwealth Crimes Act. This makes it an offence punishable by up to two years' jail for a public servant or former public servant to make an unauthorised disclosure of any fact or document they come across in their role as a public servant.

Another is the vast body of national security laws — about 70 of them at last count.

In the context of press freedom, one of the most oppressive is the so-called metadata law of 2015, which makes it relatively easy for the police and security forces to carry out electronic surveillance of communications between journalists and their sources.

Not only do these laws provide for the criminal prosecution of journalists, they also contain very limited public-interest defences. In many instances, they reverse the onus of proof, so the journalist has to prove a defence rather than the prosecution having to prove guilt.



A third factor is the Commonwealth's weak whistleblower protection law, the Public Interest Disclosure Act. This offers no specific protection for a whistleblower who goes to the media, even after he or she has tried to get the wrongdoing corrected internally. We are seeing this play out in the courts

now with the prosecution of Tax Office whistleblower Richard Boyle.

Three government ministers — Prime Minister Scott Morrison, Treasurer Josh Frydenberg and Attorney-General Christian Porter — have all batted away questions about the latest police raids, taking refuge in saying it is the law taking its course.

That is not the point. The point is that the politicians have constructed a repressive legal regime designed to protect the executive branch of government, impede accountability to the public and exert a chilling effect on the press.

This is not a party-political argument. Labor has largely supported the creation of this regime, although to be fair it has forced through some amendments to give some protection to journalists.

A fourth factor is that Australia is alone among the “Five Eyes” countries that make up the West's main intelligence network in having no constitutional protection for freedom of the press. The US, Britain, Canada and New Zealand all have this protection in some form.

Finally, laws that do exist in Australia to protect journalists' sources offer no protection from police raids and electronic surveillance.

These laws — called “shield laws” because they are designed to shield the identity of confidential sources — apply only in court proceedings. They allow a journalist to claim a privilege against disclosing information that may identify a confidential source. The court then has to weigh up the consequences of forcing the journalist to identify the source.

If a source is identified by electronic surveillance or seizure of files or electronic devices, the journalist is powerless to keep any promise of confidentiality.

We are back to the days when communicating with confidential sources can be done safely only through snail mail or — after leaving mobile devices behind — in underground car parks.





## Leaking: hyperbole meets hypocrisy

There are leaks that are properly investigated, and leaks that aren't.

Rodney Tiffen

*Inside Story*, 19 June 2019

IN MAY 2015 the *Daily Telegraph* published a front-page scoop revealing that Australian citizens suspected of involvement in terrorist organisations would soon face having their citizenship stripped by ministerial decree. That, indeed, was the proposal prime minister Tony Abbott and immigration minister Peter Dutton had put to cabinet the previous night, without warning or any briefing papers. But their colleagues, some affronted by the ambush, others by the substitution of ministerial discretion for judicial process, rejected the move.



Peter Dutton

The story was based on a leak designed to pre-empt a cabinet decision, and it clearly related to national security. Yet no investigation was launched. It's true that no official documents appeared to have changed hands (or perhaps even existed), but in other respects the incident had strong parallels with Annika Smethurst's controversial April 2018 article in the *Australian*, the subject of the first of this month's highly publicised Australian Federal Police raids. In Smethurst's case, the government's reaction couldn't have been more different.



Mike Pezzullo

Smethurst's article quoted from confidential correspondence between Mike Pezzullo, secretary of the home affairs department, and Greg Moriarty, secretary of the defence department, about a plan to have the Australian Signals Directorate spy on Australians in certain circumstances. According to the *Sydney Morning Herald*, neither prime minister Turnbull nor defence minister Marise Payne had known of the plan before Smethurst's story was published, and they promptly vetoed it. Yet 401 days later, on 4 June this year, the journalist's Canberra home was searched for seven hours by AFP officers.

Similar treatment was meted out to the ABC the following day, after an even longer hiatus. Six members of the AFP raided the broadcaster's Ultimo headquarters as part of an investigation into a news story, "The Afghan Files," that went to air in 2017. The story was part of the wider probing of the conduct of Australian military personnel in Afghanistan by various news outlets, which had already sparked a judicial inquiry. During their visit to the ABC, the AFP officers used keyword searches of scripts, notes, memos and emails to identify 9214 items they wanted to copy.

Coming on successive days three weeks after the government was re-elected, the two raids brought a strong reaction from the media, Labor and the Greens. The pursuit of the leakers after such a long time suggests that intimidation was the main aim.

These aren't the only high-profile investigations of alleged leaks in Australia at the moment. Australian Taxation Office debt collector Richard Boyle is facing sixty-six charges after disclosing unethical practices and a toxic work culture in his workplace to the ABC and Fairfax papers. Although his revelations led to reforms in the ATO's practices, he still faces a possible jail sentence. And attorney-general Christian Porter is pursuing lawyer Bernard Collaery and former Australian Secret Intelligence Service officer "Witness K" over the disclosure that ASIS bugged Timor-Leste's cabinet room during 2004 negotiations over Timor Sea oil. Not only is Porter prosecuting the pair fully fifteen years after the alleged offences, but he also wants the court proceedings held in secret.

When prime minister Scott Morrison dismissed criticisms of this month's raids, he told journalists that "it never troubles me that our laws are being upheld." But efforts to control leaks and punish leakers have little credibility precisely because they lack the basic ingredient of justice, namely consistency. If police investigated only some thefts rather than treating all theft as crime, the law would lack credibility. But that is exactly how leaks and leakers are treated.

"Leaking blows apart the Westminster tradition of confidentiality upon which the provision of frank and fearless advice depends," the head of the prime minister's department, Peter Shergold, told an audience in Sydney in late 2004. Not only is it a criminal offence, he added, it is also "democratic sabotage."



Peter Shergold

The senior public servant was justifying his request that police investigate the *National Indigenous Times*, which had quoted from leaked cabinet documents in an article revealing the federal government's plan to abolish the Aboriginal and Torres Strait Islander Commission, or ATSIC. When AFP officers arrived at the home office of its editor, Chris Graham, he immediately handed over the documents, but they insisted on searching the house for a further two hours.

Shergold's insistence on the sanctity of policy processes would have been more convincing if successive governments, including the one he was serving under, had not engaged in selective leaking of their own. Indeed, immigra-



tion minister Philip Ruddock had been caught on tape the year before revealing confidential information to a journalist about an ATSIC commissioner and promising that he, Ruddock, always looked after his friends. You could call it democratic sabotage, but far from being punished for the leak, Ruddock was promoted to attorney-general.



Philip Ruddock: promoted after leaking

Another internal leak, and another *Telegraph* scoop, came in September 2014 when an intelligence review found that the security of Parliament House needed strengthening. The finding was almost certainly leaked to the paper by prime minister Tony Abbott's office, and resulted in a front-page story under the headline "Red Alert Over Plot to Attack Nation's Leaders." There was no plot — the review identified only potential vulnerabilities — and if security were really the government's primary concern, it would have kept the report secret until the problems had been fixed.

But if raising the political temperature about terrorism was the priority, then leaking the report to generate sensational coverage was obviously the best option. The following August leading Canberra journalist Laura Tingle reported that the National Security Committee of cabinet had asked "for a list of national-security-related things that could be announced weekly between now and the election." No attempt was made by the government or the police to identify the source of the leak to the *Telegraph*.

Soon after this month's dramatic raids the *Sydney Morning Herald*

revealed that the AFP had quietly abandoned an investigation into a separate leak that occurred in February this year. At the height of the controversy over proposals by the crossbench and Labor to transfer asylum seekers in medical need to mainland Australia, a front-page story in the *Australian* revealed the contents of a home affairs briefing paper about the potential impact of the draft bill.

The paper had included input from ASIO, and its publication in the *Australian* drew an angry response from director-general Duncan Lewis, who said that it had undermined the organisation. Labor charged that the government had done the leaking, but the AFP eventually decided not to continue its investigation because the prospect of identifying a suspect was "limited." The contrast with its zeal in pursuing the other two raids was stark.

In another incident, in October 2017, police raided the headquarters of the Australian Workers' Union in Melbourne and Sydney. They were on a quest to discover whether donations to GetUp! — made more than a decade before, during Bill Shorten's period as secretary of the union — had breached the union's rules. Someone had leaked details of the raid to the media, though, and reporters and camera operators had arrived half an hour earlier to see it unfold.

The portrayal of a major union (and Bill Shorten) in a bad light on the evening news would no doubt have pleased the government. But attention shifted almost immediately to the question of who had tipped off the media. Industrial relations minister Michaelia Cash denied five times in a single day that she or anyone in her office had anything to do with it.



Michaelia Cash

But during the dinner break her media adviser, David De Garis — who had been outed as the source in a *BuzzFeed*

article — admitted to her that he had told the media, and resigned. Inconsistent and changing versions of who told whom proliferated among the media advisers in the offices of Cash and justice minister Michael Keenan.

Labor and the union claimed the raid itself was a stunt. It was authorised by the Registered Organisations Commission, a body set up by the Coalition government following the long-running royal commission into trade unions. Cash's chief of staff, Ben Davies, testified that the commission's media officer Mark Lee told him there had been a tip-off that the union might have been preparing to destroy documents. Given that the actions in contention had happened more than a decade earlier, that at least some of the donations had been declared to the Australian Electoral Commission, and that a royal commission had probed similar issues, it is hard to understand the sudden urgent need for a raid.

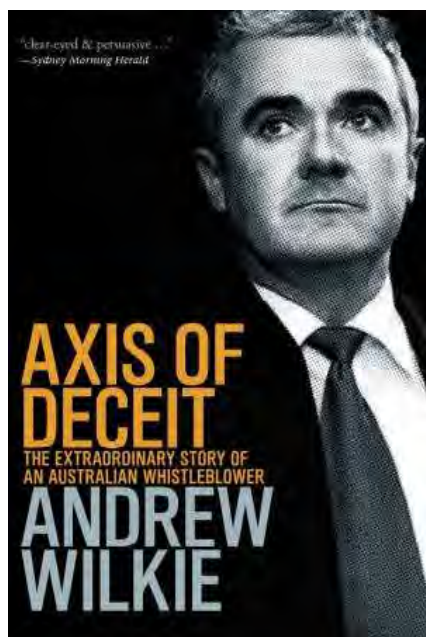
A senior AFP officer told the Senate that eight people had refused to testify about who else was involved in the leak and expressed regret that the police could not compel people to give statements or assist in inquiries. The AFP wanted to talk to ministers Cash and Keenan, but both of them twice refused to be interviewed, although they provided written statements. Cash said she referred police to her statement in Hansard and they had asked no further questions. (Cash's bill to taxpayers for the legal advice was \$288,000, while the Registered Organisations Commission's was \$550,000.) In the face of this intransigence, the AFP meekly surrendered.

Sometimes the AFP seems not simply dilatory but determined to avoid finding a leaker. In 2003, in the lead-up to the Iraq war, Andrew Wilkie, an analyst in the Office of National Assessments, and a former military officer, resigned in protest at the way he believed the Howard government was misrepresenting intelligence to back its case for joining in the United States-led invasion.

Wilkie protested in a very public way, but he also observed the proper forms. He first informed the head of ONA that he was resigning, then walked out the door to give his story exclusively to the doyen of the Canberra press gallery, Nine's Laurie

Oakes. After making a series of public criticisms, he stood as a Greens candidate in prime minister John Howard's electorate and now sits in parliament as the independent federal member for Clark.

As soon as Wilkie entered the political fray the government counter-attacked. It argued that he had not been closely involved in processing intelligence about Iraq and attempted to rebut his specific claims. But while Wilkie was careful never to disclose confidential material, the government leaked a classified report Wilkie had prepared on the possible dangers of Iraqi weapons of mass destruction against invading forces. The report was used in parliament by a Liberal backbencher and reported by News Corp columnist Andrew Bolt. Presumably it was leaked to suggest that Wilkie believed in the existence of the weapons and to show how the scenario he had envisaged had not eventuated during the successful US-led push to Baghdad.



Whoever engineered this attempt to discredit Wilkie clearly committed an offence. The document was a fairly recent one and all copies were accounted for at ONA. A few days before the leak, though, foreign minister Alexander Downer's office had requested a copy. When questioned about the leak and the possibility either he or his staff were involved, Downer prevaricated and blustered.



Alexander Downer

Yet the police investigation failed, even though a senior security official told *Canberra Times* editor Jack Waterford that "a cop who couldn't solve this one couldn't find his bum with both his hands." Current treasurer Josh Frydenberg was among Downer's staff members at the time; it would be interesting to have his recollections of events.

One particularly worrying feature of this month's raids was the open-ended nature of the searches and the large amount of material consequently taken from the media organisations. In this situation, journalists can only rely on the police exercising voluntary restraint in their handling of information not related to the alleged offence.

At least once, though, that faith has been abused. In February 2003, a Nine Network news report forced Alexander Downer to deny the "completely outrageous" allegation that Australia was already committed to fighting the Iraq war. The story was based on a minute of a conversation between Downer and the New Zealand high commissioner in which the foreign minister said that Australia would be sending troops to Iraq irrespective of any UN decision. Nine's interpretation of those remarks seemed to be confirmed the following month when prime minister John Howard announced the commitment of troops.

The government believed that the minute of the conversation had been leaked by Trent Smith, a foreign affairs officer who had once worked for the Labor Party. He was suspended on full pay and subjected to a three-year investigation, at a cost of more than \$1 million, which drew a blank. Not long after that, though, he was sacked for another offence: sending an email from his home computer while he was on holiday to a member of shadow foreign affairs minister Kevin Rudd's staff. In

response to an enquiry, Smith had merely pointed out where certain information was available on the public record and suggested asking questions in Senate estimates if further detail were needed. He had not divulged any secret information in the email, which had been caught up in the investigation of a completely different matter.

Smith appealed against his dismissal, and in October 2007 industrial relations commissioner Barbara Deegan described his sacking as "harsh, unjust and unreasonable." Four and a half years after his suspension, she ordered that he be reinstated.

The pursuit of leakers is marked by inconsistency, hypocrisy and this kind of opportunism. A look at which leaks were pursued vigorously, and which were not, shows that the energy of the police efforts seems to align almost perfectly with the government's political priorities. For anyone who thinks the AFP investigation of leaks is marked by independence, consistency and competence, I have a harbour bridge you might like to buy.



Rodney Tiffen is Emeritus Professor of Politics at the University of Sydney.

## The role of whistleblowing in the "datafied society"

Philip Di Salvo

European Journalism Observatory  
17 April 2019

CAMBRIDGE ANALYTICA have not only confirmed the key role played by journalism and journalists' sources but have also contributed extensively to the understanding of some crucial issues affecting today's "datafied society."

Though there are some differences between them, the Snowden and Cambridge Analytica cases in particular have yielded a huge body of evidence that has allowed us to study the interconnections of tech and politics



in a society in which enormous power is vested in these fields. By exposing details of the biggest mass surveillance apparatus in history and by shedding light on a recent major episode of data misuse, these two whistleblowing cases triggered a global discussion involving politics, tech platforms and finally the public.

On a broader level, these cases have also forced us to reflect on the more far-reaching repercussions of the “datafied society” and on the role of data itself in shaping citizenship, rights, propaganda and, ultimately, on data as a core element of what Shoshanna Zuboff calls “surveillance capitalism.” This term is used to refer to an economic model based on the large-scale gathering and analysis of private data culled from targeted ads, which has become the preferred *modus operandi* of any online service.



Cambridge Analytica whistleblower Christopher Wylie

### A last resort

An essential feature of both the Snowden and Cambridge Analytica cases is that — following the pattern set by WikiLeaks, which first forced us to re-evaluate the concepts of transparency and diplomacy in 2010 — they were based on the contribution of whistleblowers who brought to light malpractices by collaborating with journalists and journalistic institutions.

Whistleblowing or the leaking of evidence to the media on such an enormous and international scale does not happen very often, but when it does, it usually gives rise to a sea-change moment. Investigative reporters rely routinely on whistleblowers’ contributions, but we should not forget that those who take such a step usually do so as a last resort and that that it is one of the most extreme outcomes arising from an imbalance of power and access to information.

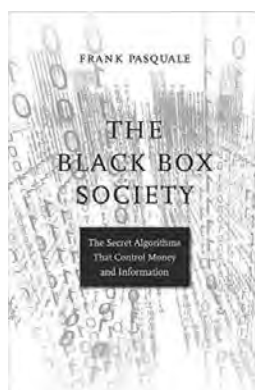
Whistleblowing can become a necessity when other less disruptive ways of

exposing wrongdoing appear not to be effective or when the whistleblowers cannot make their voices heard in the public sphere. Or when the balance between secrecy and the public’s right to know is disproportionately weighted in favour of the former.

### Shrouded in secrecy

The fact that some of the most prominent recent whistleblowing cases have concerned technology and its impact on society should come as no surprise. However, these cases are a cause for concern, as the increasing number of leaks relating to technology is symptomatic of how some processes that affect the functioning of democracy — such as the way in which algorithms dictate how people access news — are shrouded in secrecy.

In his seminal book *The Black Box Society*, Frank Pasquale employed the “black box” metaphor to define the mechanisms of some societal functions within the context of “surveillance capitalism.” Pasquale used the “black box” image to illustrate how we are “tracked ever more closely by firms and government” yet have “no clear idea of just how far much of this information can travel, how it is used, or its consequences.”



This informational asymmetry governs the contemporary public sphere, where algorithms under the control of big tech manage a growing number of operations and functions that have a far-reaching impact on a public that is kept in ignorance of them. This issue is likely to become an even more urgent one in the near future, given the growing importance of machine learning and of the functions of artificial intelligence, which are mainly based on big data analysis. At the

moment, the main possibilities for the use of these lie in the hands of the big tech companies.

### Conflicting demands

The ever-increasing privatisation of the public sphere is also exacerbating the friction caused by conflicting demands for secrecy and transparency. This follows a pattern already familiar from the field of government, where there has long been a tendency to classify far too much information relating to the public and military sectors as state secrets.

Such friction is bound to give rise to ever more whistleblowers and leaks. Silicon Valley firms have already witnessed some whistleblowing cases. In June 2017, for instance, *ProPublica* published an investigation into Facebook’s content removal guidelines based on some internal documents provided by an insider. The previous month, the *Guardian* had published another investigation based on around a hundred manuals for content moderators provided by an inside (and anonymous) source.

In August 2017, the Italian website *Valigia Blu* published details of how content moderation and censorship work in the Italian context. Again, the evidence was provided by an employee working for a contractor company that handles content moderation on behalf of Facebook. And finally, in October 2018 the US alt-right mouthpiece *Breitbart* published a leaked Google internal presentation detailing the company’s views on censorship.

### In the public interest

In December 2018, a scientist previously employed by Google, Jack Poulsen, caused something of a furor when he told the London *Times* that the prevention of leaks was Google’s No.1 priority. In future, the incidence of Silicon Valley leaks is likely to increase, though of course journalists have a duty to distinguish between genuine whistleblowing in the public interest and corporate espionage.

Back in 2015, journalism professor and tech expert Dan Gillmor noted how important it is for journalists to engage in these debates over the role of big tech in society. Gillmor insisted that journalists who aim to promote the “watchdog” function of news have an



obligation to foster understanding of such complex issues, to open society's "black boxes" and to push for more transparency and accountability. There can be no doubt that whistleblowers too will continue to make an essential contribution to this cause.

Philip Di Salvo is a post-doctoral researcher based at the Institute of Media and Journalism of the Università della Svizzera italiana (USI) in Lugano. This article was originally published by *La Nostra Città Futura*, the online cultural magazine of the Feltrinelli Foundation.

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## MPs call for ban on "gagging clauses"

Rianna Croxford  
BBC News, 11 June 2019

British members of parliament have called for a ban on "gagging clauses" used by employers to silence allegations of unlawful discrimination and harassment.

Maria Miller, chairwoman of the Women and Equalities committee, said non-disclosure agreements (NDAs) were having a "destructive effect on people's lives."



Maria Miller

NDAs were designed to stop staff sharing secrets if they changed jobs.

But MPs say they are now used to "cover up unlawful and criminal behaviour."

The Women and Equalities Committee says the government needs to clarify

the rules on whistleblowing and tackle the financial barriers employees face when trying to take cases to employment tribunals.

It comes as dozens of academics told the BBC they were "harassed" out of their jobs and made to sign NDAs after raising complaints about discrimination, bullying and sexual misconduct.

More than 90 people wrote to the committee sharing their experiences.

Hannah Martin, a mother-of-two from West Sussex, told MPs she was forced to leave her job at an advertising agency after having a baby.

"They said if I did not sign an NDA within 24 hours I would not get a payout," she told the BBC in a separate interview.

"NDAs are a bullying tactic that forces you into silence. I felt like I had no other choice but to sign. I felt like I was being abused."

She said that by signing an NDA, she not only lost her job and income, but also her self-confidence. "All the power is with the person with the money," she said.



Hannah Martin

Mrs Miller said it was "worrying" that gagging clauses were being traded by employers for job references.

"After signing an NDA, many individuals find it difficult to work in the same sector again," she said.

"Some suffer emotional and psychological damage as a result of their experiences, which can affect their ability to work and move on."

The committee said any use of confidentiality clauses needed to be clear and specific in scope and that employers should be made to investigate all allegations properly.

A senior manager should be appointed to oversee discrimination cases so that someone was held accountable, the committee said.

## "Abuse and silencing"

It also renewed calls for the three-month time limit for tribunal cases about sexual harassment and discrimination to be doubled, and added new laws should be introduced so that NDAs could not prevent people from sharing information which might support the claims of other victims.

Astrophysicist Dr Emma Chapman won a payout after being sexually harassed by a man at University College London but refused to sign an NDA in favour of a confidentiality waiver.

She said this was a positive first step towards "breaking the cycle of abuse and silencing in sexual misconduct" at universities in particular.

She told MPs she knew of two cases in London in the last five years where settlements totalling more than £100,000 in each institution were given to multiple victims of individual harassers.

But she said she was "concerned that even with the clearest terms alongside an NDA, the power imbalance between employer and employee will still serve to silence without explicit confidentiality waivers."

UCL said it welcomed the committee's findings, adding that it "no longer uses NDAs in settlement agreements with individuals who have complained of sexual misconduct, harassment or bullying as a matter of course."

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## Promises of protection are repeatedly broken

Clare Dyer  
*BMJ*, 28 March 2019

THERE HAS NEVER BEEN a more dangerous time for frontline NHS [UK National Health Service] staff to consider speaking up in defence of patients, a consultant surgeon who lost his job after reporting concerns about an avoidable death has told a meeting on whistleblowing at the Royal Society of Medicine.

All three levels of supposed protection — the NHS itself, regulators, and the law — are failing whistleblowers, Peter Duffy said.

Duffy, who reported his worries to the Care Quality Commission in 2015, won his case for unfair constructive

dismissal at an employment tribunal last July. He was awarded £102 000 which related to a dispute over pay, not his disclosures.



Peter Duffy

He told the meeting, opened by the RSM's president, Simon Wessely, that he had been forced to resign from University Hospitals of Morecambe Bay NHS Foundation Trust in 2016 "for my own protection" and was "unemployed and, it seemed, unemployable."

Since 2017 he has worked outside the NHS as a consultant surgeon at a hospital on the Isle of Man, living alone, while his wife, family, and friends still live in the Morecambe Bay area. "It really does feel like being two years into a 10 year prison sentence," he said.

His case showed, he added, that "we have NHS promises of whistleblower protection repeatedly broken, leaders who don't show leadership, regulators who don't regulate, guardians who don't hold organisations to account, and a law which simply exposes whistleblowers to more hate, threats, intimidation, and allegations."

He said that the law failed whistleblowers in at least three critical areas. First, the whistleblower was the one on trial, not the NHS trust and managers. Second, whistleblowers were "threatened with costs if they don't drop the case." Finally, for success in a claim of sacking on the ground of whistleblowing the law demanded an evidential link

or "smoking gun" to link the whistleblowing and the sacking. "This evidential link is an almost impossible task, particularly with the NHS conducting a scorched earth policy to evidence right from the start," said Duffy.

He advised potential whistleblowers, "If you speak up as a group, you are infinitely more powerful. My mistake was to go it alone."

David Nicholl, consultant neurologist with Sandwell and West Birmingham Hospitals NHS Trust, asked how far the NHS had come since the report of Robert Francis's *Freedom to Speak Up* review in 2015. "Not very far," he answered.

Nicholl said that one hopeful sign was that the CQC had fined Bradford Teaching Hospitals NHS Foundation Trust in January for breach of the duty of candour because it had failed to tell a family within a reasonable time that there had been delays and missed opportunities in treating their baby, who had died.

Peter Wilmshurst, consultant cardiologist at Royal Stoke University Hospital and a whistleblower who has reported several research misconduct cases to the General Medical Council, said that there was an inequality of arms because "the individual can never match the resources of the trust." He added, "There are no effective sanctions for those who treat whistleblowers badly."

Several speakers and delegates called for reform of the whistleblowing legislation the Public Interest Disclosure Act, which Duffy described as "full of loopholes."

Nicholl said, "There are fundamental problems with the legislation. If there's anything we can do to press on that, it's absolutely vital."

David Walker, medical director of the Morecambe Bay trust, said in a statement, "We strongly encourage staff to come forward if they think patients may be in any way at risk, so we can investigate and learn from any mistakes. He added that the concerns raised by Duffy had been thoroughly investigated at the time and that "the employment tribunal found there was no evidence that he was ill treated or suffered a detriment for raising those concerns."



Glenn Greenwald, writing for *The Guardian*, broke Edward Snowden's revelations about global surveillance

## What Assange's arrest means for journalism

Glenn Greenwald

Message to subscribers to *The Intercept*, 25 May 2019

AFTER JULIAN ASSANGE'S ARREST last month, we warned that it represented a major escalation in the U.S. government's criminalization of journalism.

Now, for the first time in history, a publisher has been charged under the Espionage Act for revealing classified information. Every news organization — including *The Intercept* — is at risk.

*The Intercept* was launched in part as a platform for publishing the unauthorized disclosures of National Security Agency whistleblower Edward Snowden. Yesterday's indictment of Assange is an attack on the very principles of freedom of the press on which we were founded.



Every day, we take pride in reporting, publishing, reading, and sharing fierce, adversarial investigative journalism on national security and other topics. We do this because we believe that this information needs to be public in order to hold the government and the power-

ful in check. These principles and freedom of the press are directly enshrined in the Constitution.

This indictment strikes at the heart of the First Amendment and the ideals of a democratic society. And the Trump administration has *The Intercept* in its crosshairs.

Journalism isn't espionage. Being a journalistic source isn't engaging in spying. And publishing information that lays bare government misconduct or war crimes is not espionage. When journalism is treated as a crime, we are all in danger. The Assange indictment is not the end of the WikiLeaks saga. It is the beginning of a major assault on freedom of the press.

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## When engineers become whistleblowers

**They're often the first to notice waste, fraud and safety issues.**

Ralph Nader

*Scientific American*, 9 May 2019

"FUNDAMENTAL CANON NO. 1" of the American Society of Engineers states that "Engineers shall hold paramount the safety, health, and welfare of the public." Most engineering societies have this principle in their codes of ethics. This duty frames the decades of struggles by conscientious engineers—whether employees or consultants—who strive to balance professional ethics with *occupational* survival.

Compared to the technologically stagnant dark days in the auto industry of cruel suppression of technical dissent over safety and toxic emissions, a censorship that carried over to the industry-controlled Society of Automotive Engineers, today's engineers are working in an improved environment for taking their conscience to work. Yet much more remains to be done to safeguard the ability of engineers to speak truth to the powers-that-be.

For starters, the word *whistle-blower*—once popularly meant to describe a snitch or a disgruntled employee—now describes an ethical person willing to put his or her job on the line in order to expose corrupt, illegal, fraudulent and harmful activities. Indeed, in the aftermath of recent Boeing 737 MAX crashes, the media routinely and positively refers to disclosures by

"Boeing whistle-blowers." Congressional investigating committees and federal agencies have called for whistle-blowers to come forward and shed light on corporate misdeeds and governmental agency lapses.

To put it mildly, this was not always the case. In 1971, I convened the Conference on Professional Responsibility—a sober name for a group of whistle-blowers from corporations, government and unions. They were ragged as "malcontents" or "occupational-suiciders." In fact, they were courageous, accurate, morally right, and willing to lose everything to expose wrongdoing.

Keynoters at the whistle-blower conference were Senator William Proxmire, who protected government whistle-blowers on military defense issues, and Robert Townsend, author of the best-selling *Up the Organization*. Townsend drew from his business experience to explain the critical role whistle-blowing could play in giant corporations. Law Professor Arthur Miller reviewed the lack of legal protection and vulnerability of whistle-blowers and presented what the law should provide "in its institutions and principles." (See *Whistle Blowing: The Report of the Conference on Professional Responsibility*, by Ralph Nader, Peter Petkas and Kate Blackwell, 1972).

After this watershed conference, much began to change. Numerous health and safety statutes now protect government employees who report noncompliance with environmental, worker safety and labor standards. Starting in 1978, a Merit System Protection Board was established and later strengthened under President George Herbert Walker Bush to give federal employees some, but not enough, due process against retaliation. Several states followed with their own whistle-blower protections.

In 1977 an NGO called the Government Accountability Project (GAP) started offering *pro bono* representation to many government and corporate whistle-blowers. After the enactment of the 1986 False Claims Act, federal employees exposing fraud against the government were able to secure a sizable portion of any resultant verdict or settlement against those ripping off the taxpayers. This law alone has

recovered over \$60 billion from the fraudsters. Private law firms and the Justice Department are regularly involved in pursuing these claims.

The vast world of state and federal procurement/military contracts and infrastructure is known to be rife with "waste, fraud and abuse." Engineers are most likely to see such violations first. Decades ago, foreshadowing the many challenges in engineering, the Society of Professional Engineers, in its code of ethics, instructed engineers on their obligation to report safety and fraud violations to the appropriate outside authorities, should they find no recourse inside their place of employment.

With \$5 trillion of deferred maintenance for our public works, as measured by the American Society of Civil Engineers, the challenges to the assertion of engineering conscientiousness will be ever larger.

We need more public interest engineering advocacy groups and initiatives to open up new frontiers of excellence and service as well as to support engineers inside the corporate framework. It was a Caltech professor, Arie Jan Haagen-Smit, not GM engineers or chemists, who proved in the 1950s the connection between motor vehicles and the lethal photochemical smog over the cities and suburbs of California. This led to smog-control regulations and ethical and legal foundations for industrial air pollution controls.



Ralf Hotchkiss

Engineer Ralf Hotchkiss, rendered a paraplegic before college, courageously revolutionized the functional and economical design of superior wheelchairs, including showing natives how to utilize local materials in poor coun-



tries. He also helped break the virtual wheelchair monopoly of a British multinational company in the process. We need more engineers who embody the three principles of any profession— independence, scholarly pursuits, and commitment to public service. Those are the vital ethical pillars to helping engineers withstand the great pressures to place commercial priorities over their engineering integrity and limit harm to the public. We see the push to relegate engineers to indentured status in industries such as the chemical, nuclear, weapons systems, mining, auto, aviation, railroad and medical devices industries, as well as the new unregulated areas of biotechnology, nanotechnology and artificial intelligence.

There has been progress in legal protections for whistle-blowers, more civil litigations and, importantly, higher public expectations and popular support for these unsung protectors. There is, however, much more work to do, especially in educating the engineering school curricula and encouraging the numerous engineering societies to take their codes of ethics seriously. But as Nassim Taleb, author of *The Black Swan*, has written, “Mental clarity is the child of courage, not the other way around.”

In 1966, in an address to a chapter of the American Society of Engineering Education (reprinted in the new book *Ethics, Politics, and Whistleblowing in Engineering*, by Nicholas Sakellariou and Rania Milleron [my niece], CRC Press), I said “the [engineering] profession must assert itself towards its most magnificent aspirations—for so much of our future is in your trust.”

Well, isn’t that a great understatement today!?

Ralph Nader is a consumer advocate and is the author of the recent books *Breaking Through Power: It's Easier than We Think* and *How the Rats Re-Formed the Congress*.



## Tell me some more bad news

Julie Myers Wood  
*Forbes*, 22 April 2019

LAST MAY, the U.K. Financial Conduct Authority and the Prudential Regulation Authority fined Barclays CEO Jes Staley over £600,000 for non-compliance with U.K. laws aimed at protecting whistleblowers. Then, in December, New York’s banking regulator fined Barclays another \$15 million for its CEO’s wrongdoing. Mr. Staley had attempted to improperly identify a whistleblower employee who had written anonymous letters to the bank’s board and senior management raising concerns about a fellow employee. And just recently, Duke University settled with the government over allegations that it violated the False Claims Act. The whistleblower in that matter was awarded \$33.75 million and the school was fined \$112.5 million.



Not a typical whistleblower

In just the last year, the Securities and Exchange Commission (SEC) has awarded some of the largest whistleblower awards in history, with awards like \$50 million, \$39 million, \$37 million, and \$33 million paid out to whistleblowers. The SEC has awarded \$376 million to 61 individual whistleblowers since 2012. These significant awards are paid out of the funds that the SEC procures from the companies that violate securities law and they indicate

that the government is serious about putting an end to unethical activity.

These recent regulatory actions and awards should serve as a reminder that whistleblowers may be harbingers of large monetary penalties, reputational damage, and increased regulatory scrutiny. But a focus on whistleblowers and their attendant consequences miss the more important point. Rather than fearing the whistleblower, companies ought to use them as an opportunity to protect the interests of the company and strengthen compliance. Companies need to get to a place where they embrace the potential whistleblower by creating a transparent culture, instilling the shared value of compliance at all levels.

Unfortunately, given human frailties, even compliant companies can face the risk of individual bad actors. Despite significant progress made by many global corporations in fostering a more compliant culture, it’s clear that even some of the most sophisticated companies still get into trouble. Institutions must shift their mindsets to view the reporting of regulatory problems as an opportunity to shine by addressing the problem, improving the institution and preventing large settlements. Here are some techniques companies can use to promote and encourage the reporting of issues internally, thereby mitigating the risk of a whistleblower.

### Creating safe places for complaints and complainants

Internal reporting is obviously highly preferable to an organization over having a valid claim reported to a regulator, the media, or a congressional committee. It raises an issue to senior leadership who are then in a position to address the issue and remediate the deficiency outside of the public spotlight. The goal, therefore, is to create a safe environment in which not only do all employees understand their role in escalating concerns, but they are well-informed about the reporting process, and are secure in the knowledge that their report is welcomed, without fear of retaliation. Creating this environment requires a thoughtful and dedicated approach with the following features.

### Set the tone at the top

Avoiding an ethical lapse starts at the top of the organization. In any industry, when ethical leadership by the executives is demonstrated on a daily basis, that often filters down to the rest of the company, creating a culture of openness, integrity, honesty, and compliance. If the top executives in an organization adhere to these principles, it is likely everyone else will, as well.



### Whistle High pitch sound

The tone at the top?

Prioritizing internal reporting at executive levels is critically important. To set the tone, senior leadership should emphasize that it embraces a culture of compliance through periodic corporate communications, which should include town halls and messaging from the CEO. These communications should stress the value of compliance to the company and encourage employees to speak up if they see something. This is a key component in establishing an environment that favors internal reporting.

### Create and internally advertise a reporting hotline

Creating a reporting hotline is one of the easiest things you can do to encourage internal reporting. The hotline should offer the complainant an opportunity to remain anonymous and be easily accessible to your employees (i.e., a toll-free number). The number should be conspicuously placed on orientation materials, employee handbooks, and other relevant communications. Give thought to the primary language(s) of your employees and consider setting up the hotline in multiple languages for ease of use.

Remember that an absence of hotline calls does not equate to an absence of issues. A robust internal controls and audit function is also critical in identifying problem areas. Without a robust process, a failure to adequately examine incoming complaints could lead to greater exposure.

### Appropriate manager training

All levels of management should be trained in whistleblowing regulations and case studies. Managers should also be given training about how best to raise awareness of the institution's internal reporting mechanisms with those they supervise. They should be educated on the advantages of internal reporting and urged to speak positively about that process, bolstering the tone from the top.

A compliance training program specifically tailored for a company's senior executives is also critical, especially in a large company where those senior executives have their focus pulled in any number of different directions.

### Create a culture of response

When you receive an internal report of fraud or other wrongdoing, it is important to take action as quickly as possible. You must have a plan in place to investigate the accusation and respond. Often, this plan must be deployed quickly but without overreaction. In creating a culture of response, your employees will know that their concerns will be taken seriously. This fosters confidence and trust from your employees. It is this trust that could be the difference between an internal reporting and an external whistleblowing situation.

Additionally, a culture of response gives you an opportunity to solve internal problems before they cause greater harm.



### Blame the problem, not the person who discovered it

As described above, you should develop a reporting system that maintains anonymity for reporters whenever possible. If, for some reason, the identity of the internal reporter is known, it is important to attack the deficiency highlighted by the internal report, not the person who made the report. Your employees need to internalize this compassionate approach in order to feel comfortable making the report. Be careful not to blame someone for making a report or complain about the extra work required to remediate the issue. Those types of responses are likely to create a chilling effect that could drive a frustrated employee to whistleblowing.

The advantages of a compliance framework that encourages internal reporting are innumerable. Not only does it give an institution an opportunity to fix problems and improve the company but dealing internally with these issues is always better than the external reputational harm inevitably caused by whistleblowers. Companies must build a culture where employees trust that they are a valued partner in compliance and will not be retaliated against for raising issues. The most successful companies will be those that shift their perspective and embrace internal reports of potential fraud or other wrongdoing, thereby avoiding the need for a whistleblower at all.

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## Five myths about whistleblowers

Dana Gold

*Washington Post*, 5 April 2019

WHEN A WHISTLEBLOWER revealed the Trump administration's decision to overturn 25 security clearance denials, it was the latest in a long and storied history of insiders exposing significant abuses of public trust. Whistles were blown on U.S. involvement in Vietnam, the Watergate coverup, Enron's financial fraud, the National Security Agency's mass surveillance of domestic electronic communications and, during the Trump administration, the corruption of former Environmental Protection Agency chief Scott Pruitt, Cambridge Analytica's theft of

Facebook users' data to develop targeted political ads, and harm to children posed by the "zero tolerance" immigration policy. Despite the essential role whistleblowers play in illuminating the truth and protecting the public interest, several myths persist about them, some pernicious.

### MYTH NO. 1

#### **Whistleblowers are employees who report problems externally.**

Often a distinction is made between employees who raise concerns inside their organizations and those who turn to outside entities, such as Congress, enforcement agencies or the press, to disclose concerns about wrongdoing. People in the corporate ethics and compliance sector try to steer workers away from whistleblowing by creating "speak up" cultures within agencies or companies. Many employees who report problems internally don't think of themselves as whistleblowers, noting that they are just doing their jobs or helping the company. And the notion that whistleblowers are employees who report externally is implicitly reinforced at times by the press, probably because the whistleblower sources with whom reporters work have, obviously, decided to take their concerns outside the walls of their employers.



Talking to the boss could be a public interest disclosure.

But under most whistleblower protection laws, employees have rights to report wrongdoing both internally and externally, free from reprisal; so failing to consider workers who disclose serious misconduct to be whistleblowers because they haven't reported the problems externally could make them liable to retaliation by their employers.

The overwhelming majority of employees who see problems want to blow the whistle internally first. Understanding this can — and should — encourage employers to respond appro-

priately when workers report problems, protecting them from reprisal and investigating and addressing their disclosures thoroughly. Similarly, employees who understand that they are in fact whistleblowers when they raise concerns inside the workplace will be better prepared to navigate their rights, risks and options.

### MYTH NO. 2

#### **Whistleblowers are either disloyal or heroes.**

A *Forbes* article, "Whistleblower: warrior, saboteur or snitch?," is illustrated with a picture of a street sign with divergent directions for "loyalty" and "whistleblowing."



This is just one of many articles noting the widely held public perception of whistleblowers as disloyal, with terms such as "disgruntled," "self-serving," "narcissistic" or even "traitor." These negative perceptions direct focus onto the whistleblower's motive while calling into doubt the legitimacy and importance of the reports of misconduct.

The image of whistleblowers as disloyal is often held in tension with a belief that they are heroes, as the articles also note. But this perception is not accurate, either.

In reality, most whistleblowers are motivated by a deep sense of loyalty to their employers and are exercising both a high degree of professional ethics and a belief that their employers will address the problem. While many employees who witness wrongdoing in the workplace stay silent, fearing reprisal or futility, those who do raise concerns — and again, most do so internally first — demonstrate faith that their employers are committed to compliance and that they can make a difference. For those whistleblowers who report externally, it is typically because the problem is significant and their employers have failed to address it

or engaged in reprisal (or both). At this point, government whistleblowers may decide that their loyalty is to the Constitution they swore to uphold; others may feel impelled by loyalty to professional ethics codes or to their own moral compass.

### MYTH NO. 3

#### **"Leaker" is another term for "whistleblower."**

"Leaking" has been used by both the Obama and Trump administrations to describe, and typically disparage, legitimate national security whistleblowers. A 2013 *New York Times* article switches between "leaking" and "whistleblowing" indiscriminately while parsing whether Edward Snowden and Chelsea Manning are heroes or traitors.

Leaking, however, is not the same as whistleblowing.



Not the same as whistleblowing

Whistleblowing is defined under the Whistleblower Protection Act, the primary law that covers nonintelligence federal workers, as disclosure of information that an employee "reasonably believes" demonstrates "a violation of a law, rule or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific threat to public health and safety." This describes misconduct that is of serious concern to the public interest.

Leaks typically don't reveal this level of misconduct, instead sharing information that may be salacious, embarrassing or otherwise interesting, even if sometimes quite important.

Even though protections for intelligence community whistleblowers are weak and dictate how those employees must report concerns, Snowden's revelations about the NSA's unconstitutional mass collection of telephone metadata, and Winner's disclosures about Russian efforts to hack state elections as the Trump campaign was



denying Russian involvement, clearly meet this standard of significance.

While reporters may use the term “leak” to describe information received from anonymous insiders, the failure to distinguish between leaking and anonymous whistleblowing risks undermining the legitimacy and importance of disclosures that clearly advance the public’s interest in accountability and a functional democracy.

#### MYTH NO. 4

##### **Remaining anonymous is the best strategy for whistleblowing.**

Journalists and public-interest organizations have taken to urging government and private-sector workers to disclose information to them, promising anonymity. News outlets actively promote their mechanisms for secure communication; some nongovernmental organizations have launched anonymous hotlines for reporting corruption or assaults on science. These messages perpetuate a myth that anonymous disclosures are both possible and in the best interests of potential whistleblowers.

Efforts like these are needed, but reporting serious wrongdoing is risky business, and employees who believe this myth may be inadvertently hurt in the course of disclosing what they have witnessed.

Because most workers raise concerns internally first, and because their information is often tied to their responsibilities and expertise, their fingerprints are metaphorically on their disclosures. Under the law, an employee who suffers reprisal for whistleblowing needs to show that the employer had knowledge that they raised an issue. A sophisticated employer may be able to suss out the identity of a whistleblower and retaliate, but an employee’s attempts to remain anonymous may make it more difficult to prove the employer had that knowledge.



Anonymity can weaken a whistleblower’s ability to gain support from public-interest organizations, professional associations, sympathetic members of Congress, enforcement agents and even other co-workers who might want to come forward. And finally, the reporter’s privilege for protecting communications is not as strong as the attorney-client privilege, and even employees who reach out to public-interest organizations staffed with lawyers fielding hotlines may not have the benefit of that privilege because they are not seeking or receiving legal advice — they are disclosing information.

#### MYTH NO. 5

##### **Julian Assange is a whistleblower.**

Assange, the founder of WikiLeaks, is widely described as a whistleblower. A 2010 interview in the *Guardian* titled “Julian Assange: the whistleblower” promotes this myth directly, and as recently as last year, ABC News called him “the world’s most famous whistleblower.” This myth muddies already difficult waters for whistleblowers.

WikiLeaks is a self-described “media organization” that “specializes in the analysis and publication of large datasets of censored or otherwise restricted official materials involving war, spying and corruption.” Before being implicated in the acquisition and release of the Hillary Clinton campaign’s emails in 2016, Assange and WikiLeaks published diplomatic cables and video footage of an Iraqi airstrike that killed two Reuters photographers, provided by whistleblower Chelsea Manning.

But unlike Manning, Assange did not discover or disclose wrongdoing as an insider. Rather, he received information from a whistleblower and published it. His methods differ from those of most journalists, but the publication of documents that reveal wrongdoing does not make Assange a whistleblower, any more than are the *New York Times* and *Washington Post* journalists who published the Pentagon Papers — or, for that matter, than I am when I advocate on behalf of my whistleblower clients, which sometimes involves helping expose the misconduct they have discovered and disclosed. They’re the true whistleblowers.



Dana Gold is senior counsel and director of education for the Government Accountability Project.

## **How many are not blowing the whistle?**

Caitlin Johnstone

*Consortium News*, 22 June 2019

WITH JULIAN ASSANGE and Chelsea Manning behind bars, think about how many people know something, but are now keeping quiet.

Whistleblower Chelsea Manning is being slammed with \$500 fines for every single day that she remains imprisoned in contempt of court for refusing to testify in a secret grand jury against Julian Assange. Next month it will increase to \$1,000 a day.



Chelsea Manning

Again, this is *while* Manning is also locked up in jail. It’s not enough to reimprison a whistleblower who already served years of prison time — including nearly a year in solitary confinement — for taking a principled stand against an opaque and unjust grand jury system; they’re going to potentially ruin her life with crippling debt as well. The only way to make it more cruel and unusual would be to start waterboarding her or threatening her family members.

All for refusing to participate in a corrupt and unaccountable legal performance designed to imprison a publisher to whom she leaked evidence of US war crimes in 2010.

People see this. People watch this and learn from this, as sure as people watched and learned from the public town square executions of those who spoke ill of their medieval lords. And just like those medieval executions, many of the onlookers have been trained to cheer and celebrate at the fate of the accused; have a look at the power-worshipping, government-boot-licking comments under my recent tweet about Manning's persecution for a perfect example of this. People have been taught what happens to those who blow the whistle on the powerful, and they have been taught to become quite comfortable with it.

And, of course, that is the whole idea.

Who is going to blow the whistle on US government malfeasance after watching what's being done to Chelsea Manning? Seriously, who? Would you? Would anyone you know?

I think most people, the overwhelming majority of people, would opt out of the chance to give the empire a truth smack in exchange for years in prison, financial ruin, and seeing their name slandered and smeared around the world. Most people have too much to lose and too little to gain to take that risk already, and the war on whistleblowers and investigative journalists is only escalating.

And that's just the general population. What percentage of people who'd be willing to suffer the draconian consequences of telling the truth about the powerful are actually in a position to do so? Most of the people who are in a position to expose significant government malfeasance are individuals who've already been selected and appointed to their positions because they've exhibited certain qualities that indicate loyalty and obedience. The bigger the secrets you have access to, the higher up the chain of command you must therefore be, and the more loyalty and obedience hoops you'll therefore have had to have jumped through.

What percentage of this population, the population who has gained access to sensitive information by demonstrating loyalty and obedience, would be willing

to face the harsh punishments which are inflicted on anyone who exposes the evil deeds of the powerful? Almost none. And the higher up the chain of command you go — i.e., the more significant information someone might have access to — the lower the probability of their blowing the whistle on any depravity they discover.

It's a really slick double bind they've got us all in, if you think about it. Try to expose government malfeasance from the inside and you're a traitor; you're guilty of transgressing the rules of the position you've been entrusted with. You go to jail. Try to expose government malfeasance from the outside and that's hacking, that's espionage. You go to jail.

Either way, you go to jail. Directly to jail. Do not pass Go. Do not collect \$200.



When is it possible to expose government malfeasance without going to jail? Why, when the government says so, of course.

And this has all been a long-winded preamble for me to get to what I really want to say here, which is this: think about how many government insiders *aren't* whistleblowing.

Seriously, just pause and really think about that for a minute. Let it sink all the way in. We know about just a teeny, tiny fraction of the evils that our governments have been up to behind the scenes, because the people who are in a position to expose those evils and who are willing to do so are exceedingly rare. And, because of the public flagellations of whistleblowers like Chelsea Manning, we may be certain that they are becoming much rarer. We appear to be moving rapidly toward a world with no Chelsea Mannings at all.

The celebrated author, journalist and historian William Blum once said that "No matter how paranoid or conspiracy-minded you are, what the govern-

ment is actually doing is worse than you imagine." I have no idea how much the late Mr Blum knew or whether he was exaggerating to make a point, but if you look at what I'm pointing to here it becomes self-evident that at the very least what we know about government malfeasance is dwarfed by what we don't know about government malfeasance. There are so very, very many disincentives for people to blow the whistle on the powerful, and so very, very many incentives for them not to, that it is a certain bet that there is exponentially more wickedness going on behind the veil of government secrecy than we realise.



William Blum in 2007

If you looked through a tiny crack in the door and saw a thousand people just in that narrow sliver of your field of vision, it would be very silly of you to assume that there are merely one thousand people standing outside. If you can see that many people based just on a very small slice of the information you'd have access to if you were, say, standing on the roof, it would be safe to assume that there are a great many thousands more that you can't see from your current perspective. How many thousands? You can't see that either.

Pause and reflect on how much you know about the evils that your government has been guilty of. Maybe you're just learning about this stuff, maybe you think you're a hot shit conspiracy know-it-all, it doesn't matter, because get this: however much you know, that's just what you can see through the tiny crack in the door. Through the very small number of gaps in government secrecy where truth was able to shine through.

No matter how much you think you know about the depravity of your government, it is necessarily dwarfed by what you don't know.

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## Conference and annual general meeting

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### Conference

Saturday 23 November 2019  
8.15am for 9am

### Speakers

*to be announced*

### AGM

Sunday 24 November 2019  
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 \$40 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 \$30

### 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](mailto:wba@whistleblowers.org.au) (our email address). Use your last name/conference as the reference.

### Low-cost quality accommodation is available at the venue

Book directly with and pay the venue. Call 1300 138 125 or email [service@unitingvenues.org](mailto:service@unitingvenues.org)

**Enquiries:** ring national president Cynthia Kardell on (02) 9484 6895  
or email [ckardell@iprimus.com.au](mailto:ckardell@iprimus.com.au)



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## Whistleblowers Australia contacts

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

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

### Members of the national committee

[http://www.bmartin.cc/dissent/contacts/au\\_wba/committee.html](http://www.bmartin.cc/dissent/contacts/au_wba/committee.html)

### Previous issues of *The Whistle*

[http://www.bmartin.cc/dissent/contacts/au\\_wba/](http://www.bmartin.cc/dissent/contacts/au_wba/)

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## Whistleblowers in prime position


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For whistleblowers in Australia, it is the best of times and the worst of times. The past few months have seen more attention to whistleblowing than in many a year. While much of the coverage is sympathetic, it is news because of the harsh measures taken against whistleblowers and the journalists who report their disclosures.

Surprise: the government's whistleblower protection laws are being shown up as window dressing. Who can take whistleblower protection seriously when government prosecutions and police raids reveal a completely different agenda?

Conveniently, in all the clamour, the revelations from the banking royal commission are being forgotten, while the whistleblowers who did so much to push the government into setting up the commission are left with nothing except the knowledge that they tried to do the right thing.

At least the government's actions have led to widespread criticism. This front-page graphic from the *Sydney Morning Herald* captures the sentiments of numerous commentators.

**Australia** [redacted]   
[redacted] **is the only** [redacted]  
**democracy** [redacted] **in the world**  
[redacted] **that does not** [redacted]  
[redacted] **enshrine** [redacted] **free speech**  
**and a free press.** [redacted]

## 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.

Renewing members can make your payment in one of these ways.

1. Pay Whistleblowers Australia Inc by online deposit to NAB Coolum Beach BSB 084 620 Account Number 69841 4626. Reference your surname.
2. Post a cheque made out to Whistleblowers Australia Inc with your name to the Secretary, WBA, PO Box 458 Sydney Markets, Sydney, NSW 2129
3. Pay by credit card using PayPal to account name [wba@whistleblowers.org.au](mailto:wba@whistleblowers.org.au). Use your surname/membership as the reference.

New members: [http://www.bmartin.cc/dissent/contacts/au\\_wba/membership.html](http://www.bmartin.cc/dissent/contacts/au_wba/membership.html)