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

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BOOK REVIEW

Whistleblowers versus systemic corruption

A review of Tom Mueller's book *Crisis of Conscience*

Reviewed by Brian Martin

Tom Mueller is a US journalist. He undertook a study of whistleblowing, proceeding by interviewing whistleblowers and many others, and used these interviews as the basis for his book *Crisis of Conscience: Whistleblowing in an Age of Fraud.*

If you want a feeling for what it's like to be a big-time whistleblower, up against powerful government and industry opponents, this is the book for you. Mueller is a great storyteller, and stories about individual whistleblowers drive his book's narrative. Far more than most treatments, Mueller provides extensive information about the upbringing, personal views and experiences of his key characters. Most of them you've probably never heard about. He does tell about famous whistleblowers like Daniel Ellsberg but more of the book is about ones like Allen Jones and Lynn Stout.

Tom Mueller

There's another impressive dimension to *Crisis of Conscience.* Mueller gives a lot of context. He tells about entire industries and how they have become prone to fraud. If ever you thought fraud in Australia is especially bad, Mueller's examination will show that the US fraud system is far more extensive, and far more corrupt in deep-seated ways.

The book is divided into chapters about particular sectors of the economy, each of which receives detailed analysis, including the medical establishment, academia, nuclear waste, finance and national security.

The Hanford fraud complex

During the project to build the atomic bomb, a large area in Washington state was used to produce plutonium. This area, called Hanford, encompasses massive buildings that now are vacant — except that they are filled with nuclear waste. If the waste escapes its containment vessels, it will contaminate vast areas. There is a workforce of 20,000 handling containment, most of them working for contractors — large companies — funded by the US Department of Energy. Every year, these contractors receive $2 billion from the government, a flow of money that is deeply corrupting.

Despite the funding, or perhaps because of it, projects to control the waste have proceeded exceedingly slowly, never reaching their goals, while in the meantime there are ever more leakages of radioactivity. In this context, there are some honest workers who see dangers and who speak out about shortcomings of the clean-up and control efforts. These whistleblowers are unwelcome — unwelcome to their employers, the contractors, unwelcome to local politicians, and unwelcome to the Department of Energy. The corrupting effects of a massive flow of government money to the local community make for a toxic environment, toxic in relation to both the physical and the political environment. Whistleblowers have lost their jobs and sometimes attempts have been made on their lives.

Mueller's account of the Hanford story is gripping. He tells the stories of individual whistleblowers and the stories of campaigners who are the most important allies of whistleblowers. However, despite their courageous efforts, the corruption continues. This is an important part of Mueller's treatment. He describes what might be called the political economy of corruption: the intertwining of economic and political systems in the service of those who are most wealthy and powerful. The implication for whistleblowers is that no agency can offer relief, because every part of the government has been captured by the same network of operators.

Hanford site

Here is Mueller's diagnosis of what's involved in billions of dollars paid to corrupt contractor corporations.

> The same ugly pattern has recurred at Hanford for generations, and when a rare whistleblower dares to name it, the contractors lie to the press about him, lie to investigators, lie under oath to the courts and to Congress, knowing that the DOE [Department of Energy] and the DOJ [Department of Justice] have their backs, nobody will check their lies, and even if they do, ultimately nobody will punish them. They lie and they lie, until, at a silent signal that all players in the game understand, they settle the charges, cut a check, and move on, writing off the settlement charge against their taxes and billing legal costs to the government, or building it all into their next fraudulent government contract. Because one thing is certain: the fraud will go on. The DOE will continue to sign contracts with the same contractors and do their bidding, pretending to regulate while aiding and abetting, swearing zero tolerance for whistleblower retaliation while whispering their names to the contractors, laughing behind their hands while whistleblowers twist in the wind. Congress holds hearings, shows its outrage at the behavior of the contractors and their government facilitators, yet Congress continues to send them our billions, because a goodly portion of those billions are kicked back to Congress as cam-

paign contributions, votes, nuclear pork. (pp. 311–312)

Financial corruption

Crisis of Conscience is a massive book, and the biggest chapter of all is about financial corruption. Mueller's background in the financial industry may be a driving force here. He tells first of an enforcement agent who worked in the government in the 1980s during the time of the Savings & Loan crisis. Back then, regulators had support from investigators and prosecutors to challenge rogue operators. But then things changed, regulations were weakened and the US Department of Justice became an ally of big business and hostile to whistleblowers. By the time of the 2008 global financial crisis, criminality in finance had become so entrenched in laws, regulations and practices that honest regulators and whistleblowers had no chance. No bankers responsible for predatory lending and selling toxic investments were prosecuted. Instead, the biggest players were bailed out by the US government — by the taxpayer.

Mueller gives a detailed account of the way the US financial system has become totally corrupted, so that wrongdoing is normalised. He shows how successive administrations have weakened controls, how Supreme Court rulings have made prosecutions for bribery almost impossible, how the Department of Justice serves the financial industry and how ordinary citizens are the ones who pay the price. Mueller uses case after case to condemn neoliberalism, which supposedly liberates markets from government restraints but actually enables systematic corruption.

> This gradually consolidating control of the economic elites over the financial system helps explain why bank whistleblowers have gotten scant traction, triggered no arrests or convictions of top bank fraudsters, led to no lasting regulatory changes: the hyenas, wolves and foxes, the people who consider predatory fraud not only clever business but socially desirable, have been set to guard the henhouse. (p. 411)

Mueller tells of an academic researcher, Janine Wedel, who studied corruption in Eastern Europe and the former Soviet Union, and how in the transition to capitalism — following neoliberal principles recommended by US advisers — massive corruption emerged, with the so-called oligarchs acquiring former government enterprises at bargain basement prices. Wedel called these oligarchs "flexians": they went back and forth between government and industry roles, ensuring that regulations served their own interests. Wedel then scrutinised the US, seeing exactly the same dynamics, with US flexians being prominent figures in industry who go in and out of high positions in government, including regulatory agencies, which become tools for their own enrichment.

Janine Wedel

Mueller condemns corruption in a non-partisan manner. His critique of neoliberalism as a facilitator of corruption regularly highlights the administrations of US presidents Ronald Reagan, Bill Clinton, George W. Bush and Barrack Obama. He notes that although Obama promised to protect whistleblowers, he turned out to be a ferocious opponent of them. In an epilogue, Mueller presents Donald Trump as a manifestation of the corruption facilitated by successive US governments and courts. Trump promised to drain the swamp of special interests but instead deepened it, and is himself a perfect example of a flexian who straddles industry and government, has massive conflicts of interest and has no allegiance except to himself.

A strong aspect of *Crisis of Conscience* is attention to scholarly work that helps make sense of systemic corruption. For example, in a few deft strokes Mueller summarises research on the psychology of obedience. As well, part of Mueller's narrative is from the point of view of researchers such as Wedel, so readers get to see the world from several perspectives, including those of whistleblowers, whistleblower supporters and social analysts. In part because Mueller has chosen to highlight high-profile whistleblower stories, and tells them in such engaging detail, the reprisals they suffer seem especially horrific.

Crisis of Conscience is a major contribution to writings about whistleblowing. It goes into great depth, provides engaging stories, and gives a great deal of information about systems of corruption. In addition, Mueller lists a large number of sources, so interested readers can probe further into areas of interest.

What's missing

Even the best book is bound to have limitations, and it is worth spelling out some of them. Mueller started out his investigations into whistleblowing by looking at major cases involving the False Claims Act, and in this was aided by the Government Accountability Project, a powerful ally of US whistleblowers. While this focus offers many insights, it also leaves many issues out of the picture. Mueller's focus is on the US, which means that the dynamics of whistleblowing in other countries are not addressed. The US has a False Claims Act, but few other countries have anything like it. More generally, in the US, courts are a crucial part of whistleblowing struggles, but in other countries there are other key players, including trade unions, political parties, activist groups and the media.

Mueller looks only at corruption at the intersection of government and industry. This means he misses whistleblowing in other domains, including schools, police, science, and churches. Mueller admits that his perspective was limited when he first started looking at national security issues: he initially thought those who spoke out were somehow different from whistleblowers in other sectors. However, changed his mind and offers a damning indictment:

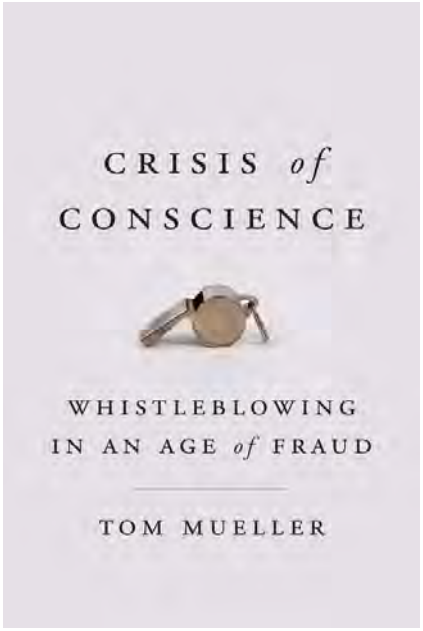
> When even whistleblower-protectors like John Crane get the whistleblower treatment, as they routinely do in the national security arena, we know that the entire system for safeguarding legitimate disclosures is profoundly broken — or rather, has been optimized to draw in would-be whistleblowers with false assurances of confidentiality and intent to investigate, and then to silence them. (p. 514)

John Crane

Because he focuses on major cases, Mueller gives no inkling of the great number of whistleblower cases that never get into the courts and never attract media attention. These are far more common than the big-ticket cases, yet can cause just as much angst for those involved.

Though never stated, Mueller seems to assume that whistleblowers need to be correct in their claims. In his insightful descriptions of systems of corruption, Mueller seems to be trying to convince readers that the whistleblowers whose cases he describes are on the side of honesty and human welfare. He makes a convincing case, but the limitation is that this leaves out cases in which people speak out but their concerns were not vindicated. To properly defend whistleblowing, it is important that whistleblowers not be subject to reprisals even when they are wrong.

In summary, read *Crisis of Conscience* for an engaging, informative and alarming account of US whistleblowers, who are one of the few remaining challenges to systemic corruption in the intertwined system of industry, government, regulators and courts. But remain aware that there is more to the whistleblower experience than high-profile cases.



Brian Martin is editor of *The Whistle*.

Whistleblowers Action Group Queensland

Awards for 2019

Whistleblower of the year
Peter Ridd

Dr Peter Ridd made his disclosures through the Federal Court about the alleged use of disciplinary processes in technical disciplines to control and/or influence the contents of public debate about environmental topics of political interest. Dr Ridd's case is the most prominent of a number of instances where codes of conduct appear to be being used to coerce scientists and engineers to remain silent regarding the facts and opinions on matters of public interest which fall within their areas of experience and expertise.

Such silence then allows views, more favoured by institutions and/or their funding agencies, an unimpeded flow to the media. In other cases, security, confidentiality and privacy arguments, and defamatory statements made public, can be employed to the same result of silence on those of a contrary view. This is diametrically opposite to the core concept of the scientific method, which relies on testing, contesting and retesting of ideas to achieve progress. It is regretted that, in other cases, conflicts of interest have been allowed to suppress academic publication of opposing scientific and engineering views, not just suppressing debate in the media.

By taking his disclosures to the Court, Dr Ridd has greatly assisted the public to coming to know of practices within academic and professional institutions that may be giving a bias to the "scientific" opinion and facts that the public receive through the media.

Whistleblower supporter of the year
Andrew Wilkie and the ABC

The Whistleblower Supporter of the Year Award for 2019 has been given jointly to those in Parliament, and in the Australian Broadcasting Corporation, who have risen to oppose the weight of secrecy being imposed by the Federal Government upon (a) its own wrongdoing; (b) the wrongdoing of rogue agencies; and (c) the wrongdoing of allies. Mr Andrew Wilkie MP has been chosen to represent his efforts and those of his parliamentary colleagues who went to the media and to the UK. The ABC took the issue before the Federal Court.

Andrew Wilkie

The efforts of MPs to protect whistleblowers subjected to secret processes, including secret prison terms, and the resistance shown by ABC to the anti-whistleblower raids on the ABC files, have re-emphasised the indispensable role of whistleblowers in protecting democracy and justice from an autocratic executive. This reasonable public interest question arises: did Australian families send sons and daughters to East Timor to assist that country to self-determination, or to trick that country out of its oil revenues?

Our government has brought unacceptable conduct of cheap trickery to family grief and personal sacrifice. A marketing mentality thinks that the deceptions inherent in a secret process imposed now may regather to government some respect for its original deceptions against the East Timorese. The Australian Federal Police jointly carries this same shame.

Particular efforts made concerning the treatment of Australian journalist and former Walkley Award winner Mr Julian Assange are strongly in the public interest. Just as Australian David Hicks was left in Guantanamo Bay to become a political millstone around the neck of a former Prime Minister who abandoned Hicks to his fate, so too will the treatment of Mr Assange by the UK and the USA, wherever these allies detain him, with a hands-off blessings of Australia's Prime Minister and Foreign Affairs Minister.

Exposing the 5-year investigations by the Inspector General's Office within Defence into alleged war crimes by Australian Defence Force members also brings credit to the winners of our award. The parallels between the imagery disclosed by Mr Assange of US helicopter fire killing civilians in the Middle East, and the ABC's recent footage of an unarmed person shot by an Australian soldier in Afghanistan, give insight into the use of government secrecy, listening devices, raids, prosecutions, secret imprisonments and never-completed investigations by Australian and US Governments.

ABC Australian Broadcasting Corporation

The Whistleblowers Action Group, with these two awards, has sought to recognise both the integrity and the courage of whistleblowers, and also the contribution of persons whose actions have been of outstanding assistance to improving the circumstances for whistleblowers in this State.

This is the twenty-seventh year that the Group has made its awards to deserving persons. Previous recipients of the awards are listed with their citations at the QWAG website at www.whistleblowersqld.com.au.

Gordon Harris, President
Contact: Greg McMahon (Secretary) 0411 757 231 and 07 3378 7232

In a lather about Ruby

Cynthia Kardell

I AM IN A LATHER ABOUT RUBY. By Ruby I mean the Ruby Princess, the sister ship of the Diamond Princess. Both are owned by Carnival Cruises, a UK/USA owned outfit operating out of Miami, with its ships registered in the Bahamas to avoid US tax, labour laws and safety regulations.

Ruby Princess

Why? Because Ruby is set to define how we remember the pandemic. About how covid-19, combined with colossal hubris, incompetence, in-fighting and even interference had the government doing a runner under the cover of Ruby's passengers, as they scattered to the four winds hand in hand with covid-19.

It is also a whistleblower's work. We do not know the whistleblower's name, which is good. So instead of the whistleblower being in the hot seat, that pleasure has been reserved for Ruby, the NSW Premier, the Prime Minister and their delegates. And deservedly so.

It seems like years ago now, but remember how the Japanese authorities quarantined the Diamond Princess when it docked in Yokohama on 3 February: that's two days after the man who had previously disembarked in HongKong tested positive for Covid-19? How all the passengers and crew had been tested and or hospitalised or sent home — some to quarantine in Darwin — by 1st March? And how it was cleared to sail on 30 March, after almost a month of deep cleaning.

I'm re-hashing the Diamond Princess story, because it *has to have been front of mind* for our state and federal health authorities and politicians, if for no other reason than that Ruby did a regular 14-day cruise in and out of Sydney, around New Zealand (NZ) and back, with the passengers coming from all over the world, as did the crew.

I did not have a handle on the Ruby story until I realised it involved two separate trips. The first left Sydney on about 23 February, returning on 8 March when potentially infected passengers were allowed to disembark. Some were allowed to rejoin Ruby for her second trip leaving that day. This is just a week out from when the last person was removed from the Diamond Princess. The dates are important, so you need to keep tabs.

When Ruby docked in Sydney on 8 March, there was a brisk turnaround with about 150 passengers disembarking. Ruby reported to the authorities that 13 had high temperatures. NSW health tested 9 for covid-19, who were found to be negative. One of the passengers rejoining Ruby said they were told boarding would be delayed as NSW Health had "locked down" Ruby to clean it. It was cleared to leave.

Between 8 and 14 March, Ruby made its way back to NZ, visiting Fiordland, Dunedin and Akaroa before

berthing in Wellington. Ruby's doctor alerted NZ health to several guests having flu-like symptoms: 5 tested for covid-19 were found to be negative. (Note, by 15 March NZ authorities reported a local tour guide had tested positive.)

On 13 March, a whistleblower leaked data logs and an email to the media. The email was from NSW Port Authority's manager Sarah Marshall, complaining that when Ruby told the federal Department of Agriculture it had 158 sick passengers disembarking (on 8 March) it did not tell them. Marshall was worried she could have unwittingly, endangered the harbour pilot. She asked for an automated "alert" whenever a health inspection was required.

Between 14 and 18 March Carnival Cruise Ships announced it would pause its Australian operations, but that ships already at sea would continue their cruises before returning to Sydney. The following day, 15 March, the World Health Organisation declared the coronavirus a pandemic. On the same day, the Prime Minister announced Australia would block entry to all cruise ships for 30 days. On 18 March Ruby's captain announced on board they had been medically cleared for disembarkation on 19 March.

Emails were flying thick and fast from 15 March between Ruby, NSW Health, NSW Port Authority, NSW Ambulance, the Australian Border Force and the federal Department of Agriculture in the lead-up to Ruby docking at 2am on 19 March in Sydney.

NSW GOVERNMENT | Health

The leaked data logs reveal NSW Port Authority had been quizzing Ruby's captain about whether anyone had tested positive for Covid-19 and whether any crew were displaying symptoms. Initially the Port Authority refused permission to dock after information from NSW Ambulance, but agreed just after midnight after talking with Ruby's Captain, who told them no one had tested positive to Covid-19, but some had flu-like symptoms. More swab tests were done. He later emailled NSW Port Authority that NSW Health had okayed disembarkation with only general precautions. Three ambulances were waiting, and the sick passengers were offloaded as dawn broke.

The logs also revealed the Australian Border Force authority had heard about 140 people being sick, but later contacted Port Authority to say NSW Health had cleared Ruby to dock. NSW Health says they cleared Ruby to dock on 19 March, because there were no confirmed covid-19 cases on board.

A day later 3 passengers had tested positive together with a crew member, who remained on board. By 24 March 133 passengers had tested positive, one had returned home to Utah, USA and one had died in Sydney's Royal Prince Alfred Hospital. The infection rate and deaths would continue to climb as the story unfolded.

NEW SOUTH WALES AMBULANCE

The following day the blame game started in earnest. NSW Premier Gladys Berejiklian encouraged us all to cut those involved some slack, saying *everyone had done their best.* ABF Commissioner Michael Outram was having none of it, blaming NSW Health. The Premier wasn't having any of that, so she asked NSW Police Commissioner Mick Fuller to investigate. On 22 March NSW Health Minister Brad Hazzard defended continuing questions, telling media that Ruby and three other ships then at sea had had a *full assessment* before permission was given to dock.

Things started to fall apart on 5 April when NSW Police Commissioner Mick Fuller announced he had set up Strike Force Bast to investigate whether Ruby had committed an offence under biosecurity laws causing a homicide or death. The obvious question left hanging in the air was who was going to investigate the state and federal authorities and their political masters?

PORT AUTHORITY OF NEW SOUTH WALES

By 6 April Ruby had been directed to leave, later docking in Port Kembla, where a separate disaster unfolded involving its crew. By then the infection rates had climbed to 600, including at least 21 crew. There were growing calls for all the crew to be tested and treated before Ruby set out to sea. Vision showing Ruby docked at Port Kembla opened most news reports until the end of April.

On 22 April Berejiklian appeared to bow to pressure, commissioning Bret Walker SC to investigate the state and federal public authorities (the Walker Inquiry). This means there are three inquiries on foot. Each has a different focus factually and legally.

The police inquiry is to investigate whether Ruby's owners, captain and or senior officers committed a criminal offence under biosecurity laws and will involve taking evidence from about 5500 passengers. The Walker Inquiry will examine the actions of the public authorities. The terms of reference are predictably brief, although they do include the usual catchall, "any other related matters that the Commissioner considers appropriate". The report is due in August, but before you get too excited, remember it will be for the Premier to decide whether we see it.

And then there is the third inquiry, which the Walker inquiry may have been designed to avoid. That is the political oversight being promised by the NSW Upper House with its brand new covid-19 Oversight Committee. Ruby is set to be the first ship out of the dock. So, regrettably we can look forward to our political representatives

trying to avoid having to answer, by claiming to do so would necessarily compromise the Walker and Police inquiries due to report later this year.

I would call this the classic retreat from accountability, beginning with the 2am flight down the gangways. The Premier has had to concede some ground each time, but knowing she still held an ace or two. We see it all the time with employers, in whistleblowing cases. Only time will tell whether her gamble, that somewhere down the track there'll be little appetite for wanting to carp on about a few people having had a bad day, will pay off.

I doubt Ruby lied. My guess is that both the state and federal governments wanted, at any cost, to avoid having Ruby docked at Circular Quay in Sydney's CBD for a month like the Diamond Princess in Yokohama. When they realised there was a problem brewing onboard as it left NZ waters late February, they just kept a lid on things. Then two things changed all that forever. On 13 March the *Sydney Morning Herald* published the information they had been trying to keep secret and two days later, the World Health Organisation announced the coronavirus had reached pandemic proportions. So, it looks as if the federal government blocked the entry of cruise ships for 30 days to give themselves room to work out what to do.

Australian BORDER FORCE

But almost immediately, their plans were in tatters. So, what happened? Why did it decide within days to allow Ruby to dock after all? And to bring it in early under cover of darkness. I guess they were clinging to the idea that the press would still be in bed at 2am. And the passengers? Well, they would be well away from the scene, before anyone was the wiser. But that wasn't what happened.

The plan — if that was the plan — ignored the potential for spreading covid-19 across the nation and instead, apparently, made a concern for the passengers to be able to keep to their travel arrangements its priority. We know this from the evidence given by a Dr Sean Tobin, who told the Walker Inquiry their concern was *primarily for the passengers, to be able to catch their flights, to get home to their own bed*. I found this evidence extraordinary, but unsurprising. I didn't have the benefit of watching Dr Tobin give his evidence, but the idea that he may have thought it so ordinary is key to understanding why that view seems to have carried the day. I have my whistleblower's hat on here and I am asking myself, was he passing it off as something it was not, in order to cover his own ineptitude or that of others? Maybe for toeing the line, in being bullied or as a cover for something he knows or half knows, but cannot say? In other words, would he rather be seen as completely lacking than stick his neck out?

I can't help wondering whether that overriding concern for the passengers was in reality a concern for a passenger. A passenger who did not want to spend 30 days at sea. A passenger who telephoned a friend for a favour. I have no information that this might be so, but it would not be without precedent and it might explain why Ruby was allowed, to dock after all. Remember the friend of a friend who rang Minister Peter Dutton in what is now known as the "au pair" affair?

And when the Pilot Authority's Mr Butchart said in evidence "he offered to turn the ship around," you have to ask why. And why did he think the ABF's telephone calls were "unprecedented." What did he think the ABF wanted him to do? Was he being encouraged to accept that Health had it all under control when he thought they knew it did not?

There are so many questions for answer. And particularly as since 1 February the federal government had played to what it saw as its strengths, bullishly calling out China and the WHO for conspiring to bring us all down. Iran and Italy were portrayed as the usual incompetents albeit for different reasons. Coronavirus was happening over there. Not here. And as late as 20 March the Prime Minister was playing down its potential. Bragging he'd be watching his beloved Sharks rugby league team on the Saturday, even as the first covid-19 restrictions were set to kick in on the following Monday. Ultimately, he was forced to give the footy a miss, but not the less well publicised national conference of Hillsong on the Sunday. Looking back, he must have thought he was bullet proof.

Australian Government
Department of Agriculture

He may well be. Unless that whistleblower has another spanner or three to throw into the works.

But right now, I am inclined to think political considerations drove the decision to lift the 30-day ban, leading to the chaos that followed. The thought of Ruby anchored off Sydney Heads for 30 days or towering over Circular Quay like the Diamond Princess had them feverishly casting around for a way to get it in and out of Sydney as quickly as possible. Maybe someone doing a favour for a friend was its inspiration? But either way, by characterising it primarily as a concern for the passengers to be able to catch their flights and to get home to their own beds, they were able to force individual officers to comply when other concerns got in the way. Like covid-19. Which is why the disbelief, dismay, confusion, even panic was re-framed, as a cover for those who had the final say. Fanciful? I think not. A rigorous public health offensive with the Opera House as a backdrop was never going to work. They had no appetite for coming clean.

Cynthia Kardell is president of Whistleblowers Australia.

Why is Bernard Collaery's trial a secret?

Steve Bracks
The Australian, 15 June 2020

YOU WON'T read all about it. Is that because we are protecting reputations?

The pandemic and the tragic unravelling of President Donald Trump's America have combined to aid Canberra's agenda to keep the prosecution of former ACT attorney-general Bernard Collaery out of the public eye.

There has been barely a mention in the media recently about an extraordinary cohort that included former prime ministers, presidents, ministers, generals and ambassadors who had provided affidavits to the ACT Supreme Court in support of Collaery's submission that his trial for breaching the Intelligence Services Act should be held in public.

It is a year since the AFP raided the home of News Corp journalist Annika Smethurst and the ABC headquarters over separate reports sourced from whistleblowers.

Now we have the media banned from covering key elements of a whistleblower's trial.

The charges against Collaery concern revelations that in 2004, the then foreign minister, Alexander Downer, approved an Australian Secret Intelligence Service operation to bug the room used by East Timor's negotiators during maritime boundary negotiations with Australia.

The ACT Supreme Court pre-trial hearing was necessary because Attorney-General Christian Porter issued a nondisclosure certificate under the National Security Information Act.

The act was introduced in 2004, the year the bugging in Dili occurred, to allow national security information to be used in Australian courtrooms — under a regime of strict secrecy. It was a response to the war on terror.

It is sensible that alleged perpetrators of breaches of Australia's "security" should be prosecuted without exposing our intelligence secrets.

But why is an Act, introduced to facilitate the prosecution of terrorists, invoked in the trial of a whistleblowing lawyer, who revealed Australia's spying on East Timor during Timor Sea maritime boundary negotiations almost a decade and a half ago?

There was no national security threat to Australia or Australian citizens, and any damage to Australia's relationship with our close, friendly, underdeveloped neighbour East Timor, has surely already occurred — and arguably been remedied by the median line-based maritime boundary treaty East Timor signed in March 2018. If anything, the government's decision to prosecute Collaery and Witness K, just two months after the treaty was signed, has again tested and stressed Australia's relationship with Timor-Leste.

Steve Bracks

Two of the new nation's leading statesmen, my friends Xanana Gusmao and Nobel Laureate Jose Ramos Horta, both of whom have served as prime minister and president, swore affidavits in support of Collaery's plea for an open trial.

Both were prepared to travel to Canberra to be cross-examined on their evidence until the COVID-19 pandemic made that impossible.

The pre-trial hearing started on May 25 — in the ACT Supreme Court. The absurd degree of secrecy surrounding the prosecution means that we don't know if Gusmao or Horta appeared by video link, or if they will appear at a later date when they can travel, or if their evidence has been accepted by the prosecution unchallenged.

Nor do we know if Collaery's other high-profile witnesses, Australia's former Indonesia ambassador John McCarthy, former foreign minister Gareth Evans and former defence chief Chris Barrie, have given evidence.

The trio's statements are not public, but Justice David Mossop told the court during an earlier pre-trial hearing that their affidavits were intended to directly challenge assertions by the Attorney-General that there would be a risk of prejudice to Australia's national security if certain information was disclosed publicly during the trial.

Interestingly, given the past roles of Evans, McCarthy and Barrie, all three would have the highest level of security clearance. But again, we don't know if this means they have been able to see and challenge the evidence against Collaery.

I suspect a primary motivation for the excessive secrecy surrounding Collaery's prosecution is to protect former prime minister John Howard and Alexander Downer, who could both be called to give evidence about why the spying was authorised.

I can understand why they would be uncomfortable seeking to justify the bugging in open court.

How do you defend diverting ASIS officers from the war on terror to spy on the leaders of the desperately poor Timorese?

At the time of the bugging, the nation had only been in existence for two years and carried the physical and emotional scars of the brutal 24-year Indonesian occupation.

In what moral universe can you justify installing listening devices to add to Australia's already massive advantages in negotiations with the Timorese for rights to $40bn-plus worth of oil and gas in the Timor Sea — on Timor's side of the median line? Clearly the same moral universe in which Collaery is being tried in secret for reporting a crime by one of the richest nations in the world against one of the poorest.

The spying was a disgraceful episode in Australia's history perpetrated by the Howard government, and successive Coalition governments have continued to defend the indefensible.

The spying is out of the bag, and attempts to cover it up, and impose secret trials on moral men, only adds to Australia's shame.

Steve Bracks was premier of Victoria from 1999 to 2007.

Christian Porter and a secret trial have destroyed my practice: Collaery

Adam Harvey
ABC 7.30, 16 June 2020

Bernard Collaery is being prosecuted for revealing national secrets, but he can't defend himself in public. (ABC News: Jerry Rickard)

Bernard Collaery's once-thriving Canberra law practice now operates from the front room of his home.

His barrister's wig and robe gather dust by the door, and his cosy workplace is infused with the smells of woodsmoke and cooking from the adjoining kitchen.

The 75-year-old lawyer, who's been a fixture of high-profile trials and inquests in the ACT for decades, says he can no longer perform his duties due to a secretive prosecution championed by the Federal Government.

"Our democracy is fragile at the moment," Mr Collaery told 7.30.

"Publicity is the soul of justice.

"It's not a coincidence that journalists, the media, lawyers are being attacked at the moment."

But being a "conservative" when it comes to law, he feels he can't practise his profession.

"I've got a lot of forced spare time," he said.

"I can't do jury work.

"I don't think someone charged with an offence, a conspiracy, can be at the bar table preaching about the law."

He blames Federal Attorney-General Christian Porter for ruining his career.

"A salutary warning to other lawyers"

Bernard Collaery is being prosecuted for revealing national secrets — specifically, that Australia bugged East Timor's government building in 2004 to gain advantage in crucial oil and gas negotiations.

He faces two years in jail, but the details of the case against him, and the details of his defence, cannot be reported.

Bernard Collaery and Witness K were both charged with revealing national secrets. (ABC News)

In court in Canberra earlier this month, Mr Porter used his national security powers to have the hearing held behind closed doors.

Mr Collaery said Christian Porter has chosen to pursue the prosecution.

"In a really deep sense, I think it was pretty ordinary of this young attorney to do that to me," said Mr Collaery of Mr Porter.

He is also highly critical of the secrecy provisions.

"I want to defend myself in public," he said.

"That's the hallmark of our democracy, a public trial.

"There's never been an issue of techniques being disclosed, there's never been an issue of identities being disclosed. If they were issues, there might be other charges.

"I'm charged with conspiring with Witness K, my client, who I interviewed in the same way I have for 40, nearly 50 years.

"It means I conspired with every client I ever had, and I conspired to give what I believe was lawful advice.

"It's a great warning to my profession, an enormous salutary warning to other lawyers who might receive information from privileged sources and have to make difficult decisions as I did."

Christian Porter declined to be interviewed for this article. But he recently told the ABC's Insiders program that the secrecy sought for this trial was perfectly normal.

"There are court cases all the time where some matters are not made public," he said.

"This is an argument about what matters may be heard inside the court, and what matters may be heard publicly.

"That, in itself, is not terribly unusual. That may be the names of witnesses, for their protection, or a whole range of other matters."

"No real national security basis for supressing evidence"

Mr Collaery's fight to have his trial held in public has now been backed by top legal figures and a former Australian Defence Force chief.

Former NSW Supreme Court judge Anthony Whealy was asked to give evidence at pre-trial hearing of the Collaery case.

He says there is no need to hold the trial in secret.

"When you get to the central issue, which is whether the bugging of the East Timorese premises should be kept secret, I'm firmly of the view that, in truth, there are no real national security bases for supressing that evidence and keeping it away from the public," he said.

"These events took place in 2004 and have been discussed many, many times in the press.

"It's impossible to conclude other than [that] the horse has bolted in this case. Whatever damage may have been done to Australia's reputation was done years ago.

"I personally think that by acknowledging that it took place and apologising for it, I think Australia's reputation would be enhanced considerably."

Former NSW Supreme Court judge Anthony Whealy says the trial should be held in public. (ABC News)

Former ADF chief Chris Barrie has also argued for an open trial.

"I went to the court to argue in favour that any proceedings take place in an open court," he said.

"I did that because I believe that transparency in our court proceedings is a fundamental building block of our democracy. I believe that the community is entitled to know what goes on in our courts.

"We live in a region where there are plenty of courts that are not open, but I wouldn't like to live in any of those countries."

Mr Collaery understands that governments do things that often fall into a grey area.

"I'm no bleeding heart," he said.

"Our agencies can do all manner of things, clearly I've been in support of that for many, many years.

"There are times when you draw the line."

Former Defence chief Chris Barrie says legal transparency is a democratic building block. (ABC News: Jerry Rickard)

Murdoch University withdraws case against whistleblower

Elise Worthington
ABC, 12 June 2020

A West Australian university that was widely criticised for trying to silence a whistleblowing academic has withdrawn all legal action and promised an independent governance review.

Murdoch University had been embroiled in a legal dispute with associate professor Gerd Schröder-Turk after he raised concerns about student welfare and admission standards in a Four Corners program last year.

Immediately after the broadcast, the university sought to remove him from his position on the university's Senate for speaking publicly about his concerns.

Gerd Schröder-Turk's stance was backed by academics around the world. (ABC News: Hugh Sando)

Key points

Murdoch University had sought to remove Gerd Schröder-Turk from the university's Senate, and was taking legal action against him.

Schröder-Turk and two Murdoch colleagues told Four Corners they were concerned for the welfare of international students at the university.

The university will conduct a governance review.

In a statement to staff this morning, Murdoch University's Chancellor confirmed the university had "permanently withdrawn the Senate motion to remove Associate Professor Schröder-Turk from his office as Senate member elected by and from the academic staff".

"Associate Professor Schröder-Turk remains a valued member of both the Murdoch University academy and of the Murdoch University Senate," the university stated.

As part of the settlement, Murdoch has also promised it will facilitate a comprehensive and independent review of its Senate governance processes.

Academic welcomes decision

Associate Professor Schröder-Turk told the ABC the case had taken a toll but he was thrilled with the outcome.

"It's been a difficult year which was at times pretty hurtful. It's certainly affected my family as well," he said.

"I think it is essential that open debate about problems that exist in the sector and I think academics should be encouraged to raise concerns that they have.

"I think good debate would suggest when a topic is raised it is taken seriously and discussed.

"What I hope is the outcome of this court case will empower academics to make sure that the public debate is had."

Associate Professor Schröder-Turk was one of three Murdoch academics who told a Four Corners investigation they were concerned for the welfare of a group of international students who were failing courses in higher than normal numbers.

After the broadcast he launched legal action seeking an injunction to stop the university taking disciplinary action against him and seeking to reinforce his right to academic freedom of expression.

Murdoch then counter-sued him for costs and damages, which they estimated could amount to several million dollars, claiming international student numbers were down and the university's reputation had been damaged because of his comments on Four Corners.

The move to personally sue the senior maths lecturer was widely criticised by academics around the world, who saw it as a suppression of free speech.

Protesters showed support for Associate Professor Schröder-Turk at a rally in October last year. (ABC News: Hugh Sando)

The university dropped the damages part of the claim after dozens of Australia's most senior academics signed a petition describing the university's actions as "highly intimidatory" and one visiting professor resigned in disgust calling it a "dangerous and uncollegial persecution of a principled academic colleague".

National Tertiary Education Union president Alison Barnes said the outcome was a win for academic freedom.

"This is such an important win because it's fundamental to ensure that academics are free from persecution in pursuit of the truth," she said.

Dr Barnes said nearly 40,000 people had signed a petition about Associate Professor Schröder-Turk and his treatment by the university.

"There was a real sense of outrage not just from academics but the broader community and politicians around the treatment of Gerd, because I think academic freedom is the cornerstone of Australian universities," she said.

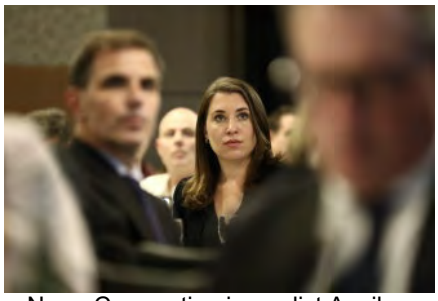
"I think this case showed the community more broadly are keen to protect whistleblowers."

Murdoch University has been contacted for comment.

Let's reclaim our freedom: decriminalise journalism

Marcus Strom
Sydney Morning Herald, 4 June 2020

THURSDAY marks 12 months since Australian Federal Police raided the home of a News Corporation journalist, Annika Smethurst. One day later, the AFP also raided the Sydney offices of the ABC. Only last week, Smethurst learned she will not be charged for writing the news story that prompted the raid. Two ABC journalists are still waiting to learn their fate.



News Corporation journalist Annika Smethurst's home was raided.
Credit: Dominic Lorrimer

Those June 2019 raids grabbed global attention about the state of press freedom in Australia, not least because dawn raids of journalists are the type of thing you would expect from a despotic police state, not a country that prides itself on being a liberal democracy.

Now, in the US this week, we see news media, including Australian television crews, targeted by law enforcement in assaults that can only be interpreted as an attempt to intimidate and silence.

Is this surprising in a country with a leader who has labelled the free press as the "enemy of the people"? US Press Freedom Tracker is investigating more than 200 violations during the past few days, most in the form of police assaults.

Australian Federal Police officers leave the ABC headquarters in Ultimo after the raid last June.
Credit: Wolter Peeters

For almost 20 years the Australian Parliament has granted governments sweeping powers to combat the so-called "war on terrorism". Politicians have cited "national security" so government agencies can reach into our homes, offices, phones and computers to control the possession and flow of information. What we are actually witnessing is a war on journalism.

Professor George Williams, Dean of Law at the University of NSW, says that since the September 2001 terrorist attacks in the US, our Parliament has passed at least 82 national security laws — on average one every three months. They were passed with what Williams calls "convenient bipartisanship".

It is high time our politicians started a process to wind back those laws that criminalise journalism. They need to reverse the creeping culture of secrecy and censorship that is dominating policy. Starting with national security, it now infects how the country handles policies as diverse as immigration, refugee settlement, social security and taxation. For a period in December last year, we weren't even allowed to know where or whether the Prime Minister was taking leave.

This is not about "getting the balance right" between national security and freedom of the press. Viewed through the prism of a zero-sum game, we will all lose out because only a free society can be truly secure.

Current laws allow governments to hide information from the public and punish any who reveal that information. There is no need for a government to explain or even justify why even the most bland information, such as the lunch menu at the members' dining room at Parliament House, has been classified as secret. It is enough that the government has deemed it so.

This cloak shields the government from embarrassment, particularly when a whistleblower reveals instances of wrongdoing. Whistleblowers, often because no one has acted on their concerns, sometimes turn to a journalist to tell their story. But the new powers allow the government to ruthlessly pursue the whistleblower and criminalise the journalism. The new laws carry prison terms for both whistleblowers and journalists of up to 20 years for telling the truth.

Last year's assaults on press freedom began on June 3 when a Department of Home Affairs official told broadcaster Ben Fordham he was being investigated over a "leak" from inside the department. The story was about Sri Lankan asylum seeker boats heading to Australia. The story was true.

The next day, AFP officers raided Smethurst's home over a story published a year earlier about discussions to allow the Australian Signals Directorate to spy on Australians. The story was true.

The next day, armed AFP officers raided the ABC over a story about allegations of war crimes committed by Australian soldiers in Afghanistan. The story had been published almost two years earlier.

The AFP planned to raid News Corporation the following day but abandoned the idea after the huge outcry over the raids.

Four press freedom assaults, actual and intended, in four days.

This was a dangerous and dramatic escalation of the assault on the public's right to know about what our governments are doing in our name. Information is locked away, and the laws that criminalise journalism remain.

But the secrecy promotes a culture of insecurity and popular distrust of government. There have been tentative signs things may change but we are yet to see tangible results. After the outcry over the raids, Parliament has conducted two inquiries into press free-

dom. They are yet to report their recommendations.

There was also a strong response from the media as rivals came together to campaign for six reforms to ensure journalists and their sources can expose wrongdoing without fear of reprisal: the right to contest the application for warrants; exemptions for journalists from laws that would put them in jail for doing their jobs; protections for public sector whistleblowers; a new regime to limit which documents can be stamped "secret"; a properly functioning freedom-of-information regime, and reform of defamation law.

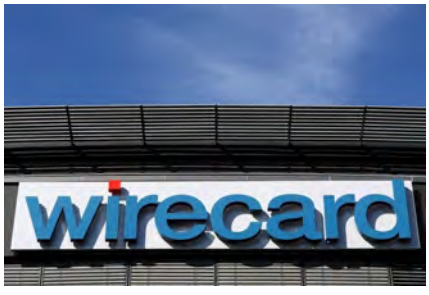
Journalists are not above the law but bad laws must be reformed if freedom of expression, and press freedom, is to be upheld. Australia's reputation as a healthy democracy that respects the human rights of its people depends on it.

Marcus Strom is federal president of the Media, Entertainment and Arts Alliance.

The Wirecard scandal: the beauty of anonymous whistleblowing

Mark Worth
Front Line Whistleblower News
11 June 2020

OVER THE WEEKEND, the growing scandal engulfing the German digital payment giant Wirecard reached the point of no return.



In the Bavarian city of Aschheim near Munich, police searched Wirecard's headquarters for evidence showing whether the DAX-listed company made misleading financial statements to investors. The raid rapidly followed a move by German financial regulator BaFin to file criminal complaints against Wirecard CEO Markus Braun and three executive board members, according to media reports.

At the center of the investigation are two public statements in which the e-money company said a special KPMG audit had not turned up anything improper. The rosy assessment led to a 66 percent jump in Wirecard's stock price from mid-March to mid-April. The price tanked in late April when KPMG said — in fact — it could not verify Wirecard's third-party profits and had difficulty confirming whether some of its business was real.

It's been a hard fall for a company that became a leader in the futuristic fintech industry, surpassed the market value of Deutsche Bank, and replaced Commerzbank, Germany's second-largest lender, on the DAX stock exchange.

Look a little deeper into the extensive media coverage and you'll see that whistleblowers were integral in bringing the alleged misconduct to the attention of regulators, the investment community and the public.

Financial Times reported last year that insiders exposed a "book-cooking operation" within Wirecard's offices in Asia. One whistleblower received evidence via the encrypted messaging app Telegram. The internal Wirecard investigation "Project Tiger" unearthed suspicions of falsified accounts and "cheating, criminal breach of trust, corruption and/or money laundering." FT's own investigation said internal company documents "point to a concerted effort to fraudulently inflate sales and profits."

One whistleblower told FT, "If a payments company can do this, how can you have trust in the system?"

The beauty of this story is that the whistleblowers — however many there are and wherever their live — have not gone public with their identities. They did their job. They provided their evidence. Then they went home and went about their day. They had the foresight and self-preservation instincts not become part of the story themselves.

The media can hardly help themselves from sensationalizing the messenger rather than reporting the message. The Wirecard whistleblowers deprived journalists of this pleasure, leaving the media with no choice but to cover the scandal itself. This improves chances that Wirecard could be held to account for any violations. By remaining anonymous, the whistleblowers also are deflecting the sort of scrutiny, privacy invasion, character assassination and industry blacklisting that befall many whistleblowers who go public.

If one or more of whistleblowers live in Germany, they are particularly wise to stay out of the limelight. German companies and officials routinely retaliate against employees and citizens who report misconduct. And because Germany has no private sector whistleblower law, Wirecard employees would have no legal remedies if they are fired or demoted.

Sounding the alarm: one whistleblower's story

Darlene Ricker
ABA Journal, 26 March 2020

Chris Smith, center, is a whistleblower who was awarded nearly $2.5 million. Lawyers David Marshall, at Smith's left, and Michael Filoromo, at his right, represented Smith.

A SUBSTANTIAL whistleblower reward can change a client's life in more ways than the obvious one. Sudden financial security is in no way "easy money," says whistleblower Chris Smith, who grappled with mixed feelings from start to finish of his six-year journey.

"The process is scary," says Smith, a government employee who reported wrongdoing in 2011 and was awarded nearly $2.5 million in 2017.

His case fell under one of two major types of whistleblower cases: those that can lead to awards for providing insider information to help the government recover money for taxpayers, investors and others; and the larger category that involves whistleblower retaliation suits, of which there are many varieties. The Occupational Safety and Health Administration alone administers about two dozen retaliation statutes, and there are others.

Smith's case differed significantly from most whistleblower cases. He was the first government employee to re-

ceive an U.S. Securities and Exchange Commission award, according to SEC reports, and to date, he is one of approximately 75 whistleblowers to receive an award from more than 33,000 tips. In addition, he received the maximum award available under the statute because of his significant contributions to the SEC's investigative and enforcement efforts.

When Smith noticed that a user of government services "appeared to be manipulating good rules for bad behavior," he says, he looked into it further. He discovered that the company was misusing SEC time-stamping rules to avoid paying investors the full amount owed — and that it had been going on for 15 years.

He didn't work for the SEC, so he reported it internally to his agency but it had no jurisdiction. He tried contacting law enforcement agencies and then went directly to the wrongdoer, also to no avail.

If the company had stopped its fraudulent conduct when he brought it to their attention, says Smith, "That would have been the end of it." When that didn't happen, he went forward, and the SEC fined the company $8 million under the whistleblower provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

"Although you feel protected by a whistleblower statute, there's always something in the back of your mind, a feeling that you're going to be exposed for what you did. You have to think about that when you decide to do this," says Smith, who has a family to support and was concerned about his job security. In addition, he says, "No one wants to rock the boat. When you do, you realize there will be extreme pressure [on you]. What gave me solace is that deep down inside I knew I was doing the right thing."

As are with most whistleblower cases, the investigation was a protracted process. For that reason, attorneys who represent whistleblowers say it can be a lot lighter lifting to file a tip, which could be just a few sentences online, than to undertake years-long litigation under the FCA.

For much of it, Smith says, he had a lot of anxiety because the government kept the proceedings under wraps.

"You're in the dark during it. You keep wondering, 'What's going on? Did I do the right thing?'" says Smith, who was represented by Michael Filoromo and David Marshall, partners with Katz, Marshall & Banks in Philadelphia and Washington, D.C., respectively. "The key to managing your anxiety is your attorney. Mike and Dave kept me grounded."

"My moral compass drove me in this situation," says Smith, who had no idea he could receive an award when he reported the wrongdoing. "I was just hoping for a plaque or a letter of commendation. … Once they issue you that check, it becomes surreal."

Leaked video shows army officer threatening whistleblower

Khaosod English, 29 May 2020

Battle tanks participate in an army parade in Saraburi on 18 January 2020

BANGKOK — A video that went viral on Thursday shows a senior military officer reprimanding a soldier who spoke out about alleged corruption in the ranks.

In the video, a man later identified as commander of the Army Ordnance Materiel Rebuild Center Apichart Artsantia can be heard telling his clerk, Sgt. Narongchai Intharakawi, to stop drawing public attention to the scandal and urged him to respect the unity within the armed forces.

"You may be able to get away this time, but there's no next time for you," Maj. Gen. Apichart says in the clip. "If you want to argue with your commander, if you believe you're right, there's a protocol in place to report it. I have been serving for more than 30 years, justice is delivered in every case. I haven't seen any injustice before."

The general continued, "Don't think like a civilian. Reporting this and that will only get you in trouble. If you want to succeed in your career, then adapt to it. I have given you one last chance. I'm disappointed because you destroyed the reputation of our unit."

Narongchai made news in April by reporting a fraud in his unit's allowance money to a Parliament's committee on transparency — the decision which he said might have cost him his life. Narongchai said he spent a year trying all channels to report the misconduct, to no avail.

"I have been forced to sign up with the program like many low-ranking men," Narongchai said Wednesday. "I have no family or children, so I want to speak out for my colleagues in order to protect them and for the sake of the nation. No serviceman wants to hurt the army, but the commanders should take this matter seriously."

Seri Ruam Thai MP Sereepisut Temiyaves, who also chairs the House Committee on anti-corruption, said he will call for a meeting to look into the matter as soon as the emergency decree has been lifted.

Sereepisut said the case is considered to be a serious allegation, since corruption within the army led to Thailand's worst mass shooting by a disgruntled soldier earlier this year, he said.

"We must take action immediately, otherwise it can escalate like the Korat case," Sereepisut said. "I ask Sgt. Narongchai to remain calm. The House Committee will take care of this matter to the best of our ability."

The army top brass has yet to comment on the incident. The armed forces are often criticized for their perceived reluctance to address allegations of corruption and nepotism within their ranks.

Army commander-in-chief Gen. Apirat Kongsompong on Wednesday also refused to testify before the House Committee on law and human rights over the alleged intimidation against the sergeant. He turned the hearing over to ordnance corps chief Sornchai Kanjanasoot.

"Lt. Gen. Sornchai said the army has launched a probe into the alleged corruption and intimidation," committee's spokesman Rangsiman Rome said. "Sgt. Narongchai also asked to be put under a witness protection program and transfer to another unit, which we will coordinate with the anti-corruption commission to facilitate his requests."

Apirat pledged a renewed fight against internal corruption earlier this year following intense criticism in the wake of the Korat mass shooting that left at least 29 people dead. The killer allegedly started his rampage after his commanding officer cheated him of his money.

A hotline for low-ranking servicemen was launched as part of the effort, though it is not clear whether the whistleblower sergeant has used it.

Why it's high time for whistleblowing

Jennifer Pacella
New York Daily News, 10 June 2020

WE HAVE BEEN HOME in comfortable clothes, saving money on commutes, gas, makeup and restaurants. We have not seen our colleagues in months, at least not in a way that requires real-life, interpersonal dialogue in a typical work setting.

This pause in navigating daily all the intricacies of workplace culture, office politics and power dynamics has opened the door to a new reality that eliminates the typical barriers to workplace whistleblowing — the most prominent being fear of retaliation. In fact, the Securities and Exchange Commission has received a record increase in whistleblower tips from mid-March to mid-May of this year, providing the agency with inside knowledge of everything from fraudsters taking financial advantage of vulnerable parties during the pandemic to misuse of federal aid.

It is a period in time ripe for whistleblowing: workplace accountability is minimal, misconduct is high, and would-be whistleblowers feel much less hesitant than they normally would to report.

But this is not the kind of whistleblowing most workplaces want. The current situation is likely to dramatically increase "external" whistleblowing, which is the least beneficial to organizations. External whistleblowing occurs when employees report concerns outside the confines of their workplace, blowing the whistle directly to the government, the media or some other external source, rather than internally within their organizations.

For reasons you might expect, if workplaces had a choice, they would opt for an internal whistleblower. Keeping sensitive, potentially damaging information within the entity has several benefits, including addressing possible legal violations in early stages and avoiding litigation, which can save millions of dollars. Also, internal whistleblowers often raise concerns within their expertise to colleagues who may not even realize the potential unlawfulness of their actions, which allows, hopefully, a prompt reaction to remediate.

Internal whistleblowing dramatically fades when employees are physically distanced not just from coworkers but also from company reporting channels, internal whistleblowing hotlines or even the anonymous suggestion box. The opportunity to talk face-to-face with a boss or colleague about a possible illegal or unethical action is lost. A Zoom session changes the ability to feel out people's verbal and non-verbal clues and get a sense of how they might respond to the bad news you've just given them. As caring for children, household chores, and worries about our health take equal priority during the workday, the allegiance and accountability we typically may feel towards our places of employment becomes a sort of "out of sight, out of mind" state of being. Whistleblowing research shows that it is in fact the most "loyal" employees who blow the whistle internally; being away from the office may just tip the scale in favor of an external report.

As if the new work-from-home dynamic were not enough to prompt external whistleblowers, the current state of the law is the cherry on top. Government agencies like the SEC and IRS give whistleblowers a percentage of what they collect from violators, and these bounty rewards sometime amount to millions of dollars in rewards for the whistleblower. This kind of pay-out, which is only available to external, and not internal, whistleblowers, is as tempting as ever given the pandemic, as we live in a time of widespread economic crisis, loss of jobs, and numerous other financial hardships. In addition, a monumental 2018 U.S. Supreme Court opinion confirms that it is only external whistleblowers reporting directly to the SEC who are eligible for the retaliation protections of the popular whistleblower program under the Dodd-Frank Act. Therefore, if an employee blows the whistle internally and is retaliated against, this law will provide no recourse.

As we continue our lives online, employers need to empower employees, reminding them how to report any concerns internally, making workplace hotlines or reporting systems accessible, and echoing promises of non-retaliation. They need to work hard to counteract the limits of their computer screen to reinforce a culture that can be felt by their employees to encourage and value reporting.

And for the bad apple employers out there who are already breaking the law or acting unethically, let this be a lesson of the boundless dangers of doing so, regardless of whether we are living through a global pandemic, utopian bliss, or the typical, mundane workweek.

Pacella is assistant professor of business law and ethics at Kelley School of Business, Indiana University.

Germany loves whistleblowers — unless they are German

Mark Worth
Berlin Spectator, 27 March 2020

FROM AVERAGE CITIZENS to grassroots activists to the highest levels of government, Germany has had a long and devoted love affair with the three most influential whistleblowers of our time. But the country is not quite as enthusiastic when it comes to similar figures on its own turf.

Julian Assange, Chelsea Manning and Edward Snowden were nominated for the Nobel Peace Prize by 17 Bundestag members last month — in recognition of their "immense personal

sacrifices." The German Green Party sponsored the *Anything to Say?* statue of the three bronzed heroes, which premiered at Berlin's Alexanderplatz before being displayed at Dresden's Theaterplatz.

Candlelight vigils, public protests, Facebook campaigns, Halloween masks, petition drives, and hand-painted signs hanging from apartment buildings across the country have lauded and memorialized Assange, Manning and Snowden for many years now. Germany has proudly embraced its fast-growing international reputation as a hotspot and safe haven for whistleblowers, hacktivists, Internet radicals and other dissenters. *The Guardian* called Berlin a "refuge" for "digital exiles," and hailed its "growing community of surveillance refuseniks."

While many controversial international figures — and even fugitives — have been applauded by the German public and establishment alike, the same cannot be said for homegrown whistleblowers.

Tales of whistleblower retaliation

Without any known exception, Germany has not protected — much less honoured or cast in bronze — any German citizens who have exposed crime, corruption or public health risks. At least over the past 25 years, no public whistleblowers in Germany have been spared career damage, financial harm or personal ruin. For them — unlike Assange, Manning and Snowden — their personal sacrifices have gone uncompensated and unappreciated.

Far beyond being fired from their jobs, German whistleblowers have been sued, harassed, prosecuted, investigated for treason and publicly slandered. One had his home raided by the police. Another reportedly was poisoned.

These tales of whistleblower retaliation seem incongruous in a country whose Constitution enshrines freedom of expression, where media freedom ranks 13th out of 180 countries, and where the police politely help protesters block traffic for their demonstrations.

But the stories are more believable considering Germany has among the weakest legal rights and protections for whistleblowers in all of Europe, according to research conducted for the EU. In terms of protecting its own citizens from retaliation, Germany ranks behind the likes of Chile, Kosovo, Malaysia, Tunisia, Ukraine and Zambia.

It wouldn't be surprising if you have not heard of any of these cases. Most of them have been scantily covered by the media or ignored outright.

Long roads to uncertain justice

Germany is home not only to some of Europe's most underreported whistleblower cases, but also some of the lengthiest and most vindictive.

While working as a stockbroker at Frankfurt's DG Bank in 1996, Andrea Fuchs reported evidence of insider trading and other suspicious activity surrounding a stock deal valued at 400 million Deutschmarks (about €200 million). DG Bank — now known as DZ Bank, the second-largest bank in Germany — fired her after being subjected to an elaborate harassment campaign.

Andrea Fuchs

The retaliation, according to an internal bank document, reportedly included denying Fuchs vacation days and business trips, giving her "trivial tasks to prevent her from participating in the normal course of business," reducing her customer base "bit by bit," referring customers to her colleagues, and coming up with accusations of poor performance.

Fuchs reportedly has filed some 50 lawsuits and other legal actions over issues including unfair dismissal, and unpaid wages and benefits. Germany's Constitutional Court denied Fuchs' appeal in December 2016, ruling that her right to "freedom of expression was secondary to the interests" of the bank.

German courts also didn't protect Brigitte Heinisch's free-speech rights, but she took her case to a higher authority and ultimately achieved justice — though at a high personal price. Her struggle began in 2005, when she was fired from a Vivantes nursing home in Berlin after reporting negligent care of elderly men and women. "Residents were only showered once a week and sometimes spent hours lying in their faeces before being washed and their bed cleaned," Heinisch told authorities.

Brigitte Heinisch

An official inspection of the facility two years earlier found understaffing, unsatisfactory care and poor documentation of services provided to residents. Heinisch continued to tell managers about the problems, to no avail. She finally filed a criminal complaint with the police, but when prosecutors refused to file charges against Vivantes, she was fired without notice and given no severance pay.

Several levels of German courts rejected her unfair dismissal claim, with judges ruling Vivantes had a "compelling reason" to fire her because she filed a criminal complaint against the company.

Heinisch appealed her case to the European Court of Human Rights in Strasbourg. In 2011 the court awarded her €15,000 in compensation and ruled Germany violated her right to freedom of expression granted by the European Convention on Human Rights. In 2012 Vivantes agreed to pay her €90,000 in damages and give her a positive employment certificate.

Whistleblowers as official enemies

German officials and institutions have not just failed to come to the defence of whistleblowers. In several cases they have gone on the offensive against their own citizens by deploying police, prosecutors, judges and other authorities.

Based on the poor outcomes of many past whistleblower cases, and considering the staunch official opposition to strengthening whistleblower rights, Germany has a lot of catching up to do.

This is a greatly abridged version of Mark Worth's article. For the full version, go to https://bit.ly/2NIrUzX

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Viruses and WBA

Covid-19 continues to be the number one issue on people's minds, either the disease or the government measures to control it. You can read many stories about whistleblowers raising the alarm about failures to properly deal with the virus.

Meanwhile, life continues. Other areas of whistleblowing remain important and should not be ignored.

The Whistleblowers Australia annual conference and AGM are scheduled for November, but we're not making any specific plans yet because of covid-19. If necessary, the AGM will be run online. Stay tuned.

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.

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1. Pay Whistleblowers Australia Inc by online deposit to NAB Coolum Beach BSB 084 620 Account Number 69841 4626. Use your surname/membership as the reference.

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

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New members: http://www.bmartin.cc/dissent/contacts/au_wba/membership.html