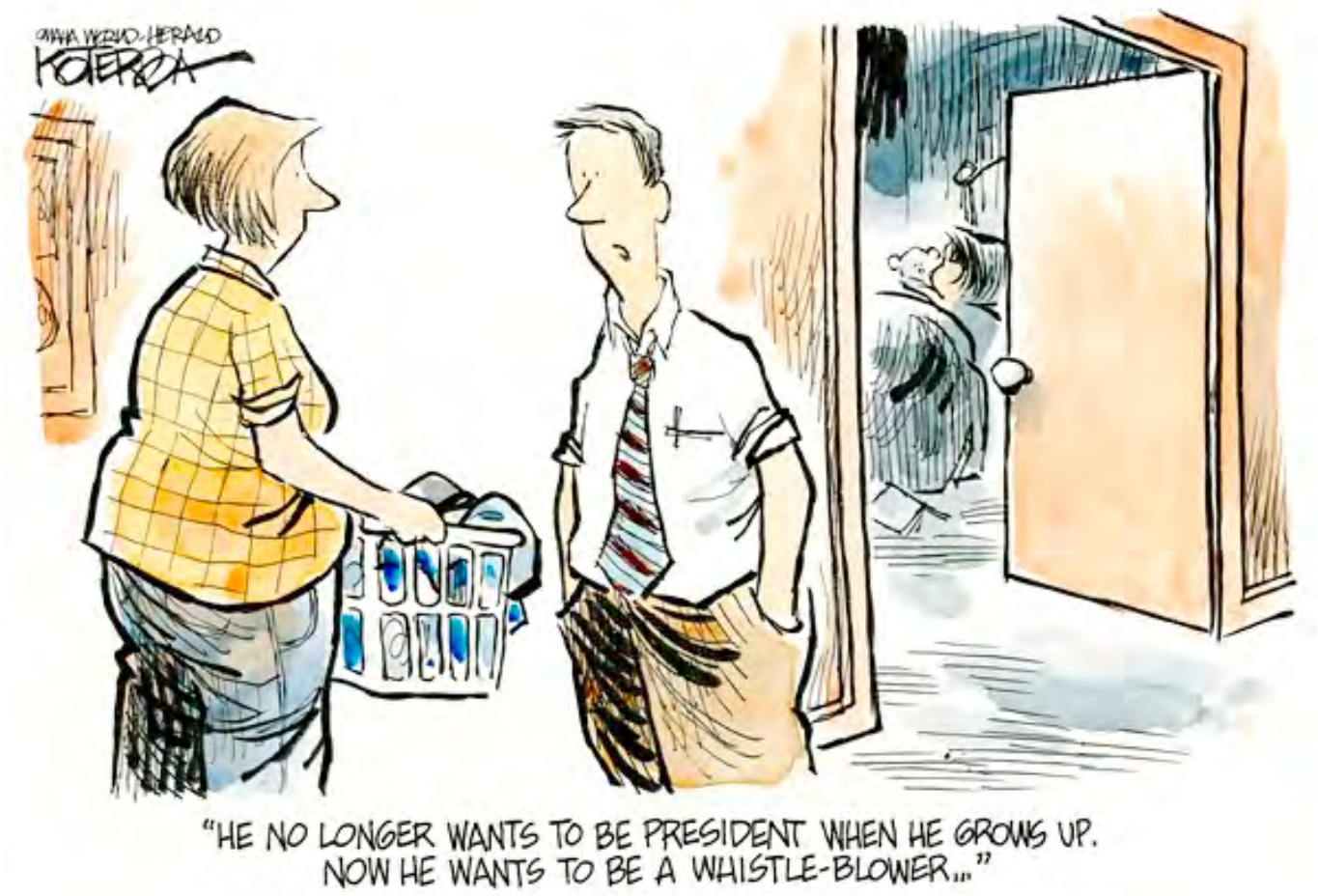
"All that is needed for evil to prosper is for people of good will to do nothing"—Edmund Burke

The Whistle

No. 106, April 2021

Newsletter of Whistleblowers Australia (ISSN 2205-0299)



China's lesson: copping it sweet for the greater good

Cynthia Kardell

A LITTLE over a year ago, as apocalyptic footage of the rescue of Mallacoota's residents from the Black Summer bushfires faded from our consciousness, news of a new coronavirus started to dominate our global newsfeeds. It began with ophthalmologist and whistleblower Li Wenliang, who was one of eight colleagues detained by police on the 10th of January 2020 for spreading "false rumours" about a new virus, which had 7 people struggling for life in Wuhan Central Hospital's emergency department.

Initially meant to be a private message between work colleagues, he encouraged them to protect themselves from the infection: but when the Public Security Bureau in Wuhan found out, it made him sign a gag order for making false statements that disturbed the public order. In a video for Caixin Global, a Beijing based paper known for its investigative journalism, he explained how he was ordered to stop further "illegal activities" or face legal punishment and why he decided to warn the world about the virus, saying "a healthy society should not have just one voice."

Little did we know then that Li was one of the first people to publicly recognise the outbreak of a new, severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) — the agent responsible for Covid-19 — which has spread globally, by infecting and killing the millions, whose leaders have been too concerned with their personal space and politics to grapple with its deadly potential.

Li contracted SARS-CoV-2 from one of his patients and died in Wuhan Central on 7 February last year.

His death sparked outrage in China, with its citizens taking to message boards in lockdown to voice their gratitude for Li's dedicated front-line service and criticise the response of Wuhan's security and medical officials to his warning. In the days before his death, Li told the *New York Times* "if the officials had disclosed information about the epidemic earlier, I think it would have been a lot better."

The *Washington Post* recorded how what became a global phenomenon actually began mid-January in Wuhan, where the first social media posts recorded anonymous voices in the night, shouting from their high-rise apartment buildings a cry of "jiāyóu!" — which apparently, translates to "keep up the fight." The practice quickly took off in Italy, where they first emerged to bang on pots, play accordions and wave flags. And then, being Italians, they sang everything from arias to soccer chants. I wept for them when a quarantined Italian tenor passionately sang "Nessun Dorma" from his Florence balcony.

China imposed one of the world's strictest lockdowns on 23 January. Seven days later the World Health Organisation declared the coronavirus a public emergency of international concern, after receiving reports of positive cases in Thailand, Iran, Italy, Europe, the US and here in Australia, where 4 cases were identified in the week leading up to Australia Day last year. Which is why I think that but for national security considerations, Li Wenliang would not be known today.

Instead in just over 3 months he went from being public enemy number one to a martyr under the Heroes and Martyrs Protection Laws, which is why his personal page on the Weibo platform remains online. It has become a rare space for users to commemorate the trauma of the early outbreak after the country imposed a strict lockdown on millions of people in Wuhan and surrounding Hubei province. One citizen posted "I thought everyone would have forgotten you after a year. I was wrong, you live forever in the hearts of the Chinese people."

This may be a tiny, tiny step from Australia's perspective, but it is a remarkable about-face for a government and one I can only envy, in thinking about our whistleblowers David McBride, Richard Boyle, Witness K and his lawyer Bernard Collaery, who are being punished for humiliating the government with the truth. Because nothing can detract from the fact that the greater good has been allowed to triumph over political ambition and life in Wuhan, a city of 11 million, is in a much better place today with its shopping malls, lively night markets and Li Wenliang's Weibo platform all bustling since the world's first covid-19 lockdown was lifted in April last year.

Others, much less pragmatic than China, have continued to fail us in other ways, with last summer's bushfire victims, who huddled in safety wherever they could, largely left to fend for themselves after lives and homes had been lost. They jostled in vain to be heard even before the government's focus shifted to surviving covid-19.

Among those to cut through in February was Julian Assange, who was back in a London court facing extradition to the US for espionage. It would be the better part of a year before the UK Justice Baraitser would rule in his favour, finding that Assange had the *"determination, planning and intelligence,* largely due to his autism and Asperger's to commit suicide, as borne out by his having devised credible ways to do just that in Belmarsh prison." That "his health had improved significantly since having conditions relaxed in Belmarsh, which conditions would not be possible if sentenced to prison in the US." Further that in law "oppression as a bar to extradition require(d) a strong threshold" and "there (was) a public interest in giving effect to treaty obligations" before deciding "it would be oppressive to extradite him" to the USA.

The Assange team and others globally urged President Trump to pardon Assange or the incoming President Elect Biden to drop the

proceedings, but that was not to be either: a week into the new administration, the US Department of Justice confirmed it would appeal Baraitser's decision.

You see the US has this quaint little custom. It believes it alone in the world, can sue anyone for anything anywhere, wherever its political ambitions are thwarted by others, less powerful. It just will not cop being humiliated by the truth, which is why the US says that re-framing journalism as espionage is fine, if you think you can't get around the First Amendment any other way. Now I have this quaint little idea that this is an opportunity for the Biden Administration to do the sort of pragmatic about-face that even China can do.

The students in Hongkong were still holding the line against mainland China in February. We all marvelled at their incredible resilience, with the US strident in its call for China to observe the rule of law. I marvelled at the hypocrisy of both.

Early in March former lawyer Bernard Collaery became a bit of a fixture in our news after launching his book *Oil Under Troubled Water* as he battled more publicly with a less than pragmatic government. It was more intent on putting him behind bars than facing up to the whole sordid scandal that is said to justify charging him and Witness K with conspiracy to breach the Intelligence Services Act 2001.

On 19 March with the cruise ship Ruby Princess towering over Circular Quay in Sydney, both state and federal governments were scrambling to keep a lid on things, even as they were being forced to publicly identify covid-19 as a real and present danger after all. Up until then, it had been a strictly geo-political plaything. With the prime minister needling the WHO into declaring it a pandemic, accusing China of deliberately infecting the world and smugly putting down those he would have us believe were dolts, like the Italians and Iranians, who were really battling with their first lockdown. It was a "China thing" trumpeted Trump and his mate Scotty (aka Prime Minister Scott Morrison), until the WHO declared covid-19 a pandemic on the 11th of March. Without missing a beat, the prime minister enthused over the bespoke arrangements he had put in place, which were to take effect on the following Monday, so as not to interfere with his beloved Shark's footy match on the Saturday.

From April we were all scrambling to get a handle on basic epidemiology. Spelling it was the first challenge as armchair specialists popped up everywhere, with everyone sure only they understood the experts. Some of those experts have become familiar faces on our screens as they patiently explain the daily figures and public health restrictions. We hang on their every word, although some haven't taken kindly to losing their freedom to infect others, ably assisted by those who live to squeeze every political opportunity dry.

Globally, infections and deaths soared into the millions and the US was behaving like a failed state. Here in Australia, only hundreds of lives have been lost, which is why, perhaps, we quickly tired of banging pots and applauding the work of our beleaguered health workers.

Instead, we turned inward to the things that concerned us most, as essential workers everywhere got on with the business of keeping us safe. It reminded me of a book reviewed on radio recently. It examined the diaries and intelligence reports gathered by the UK's intelligence agencies during the Blitz from the casually, intimate chats had in bomb shelters, sickbays and corner shops and it was — no surprises here – mostly themselves! And it was not entirely complimentary, which may come as a bit of a surprise, although it shouldn't. People were pulling together and helping strangers, but they were also breaking rules and exploiting each other. The Brits quickly adapted to their new "norm" just as we have ours and they, like us, said things like how they would like the world to be a better, kinder place. I couldn't agree more, but I worry we won't dream deeply enough about the things we've learnt about ourselves as individuals, voters and communities both global and local.

In May 2020 whistleblower Chelsea Manning was released after being imprisoned for refusing to give evidence against Julian Assange: but not before the US authorities had made it very clear, that just because the Grand Jury had expired didn't mean they wouldn't do it all again, if she refused to help them convict Julian Assange.

Here in Australia the CEO of the Macquarie University Hospital in Sydney shocked many with his brazen, written directive to staff specialists to help track down the whistleblower who he said threatened their cosy little scheme to bill Medicare for elective surgery at the same time as they were being paid by government to defer the elective surgery to free up beds for covid patients. It is a shocking example of blatant coercion on the one hand and what business as usual means, when fraud is adopted as its model.

Nothing happened, other than the federal government metaphorically making a mental note to check on Macquarie's Medicare claims. By then we were numb with just how ordinary it had become after a year of day in, day out accounts in the Hayne inquiry into banking and financial services industries, about how incentivising fraud to drive up profit became business as usual.

You will recall Commissioner Hayne wanted the existing consumer protections to be beefed up, to make the banks take them more seriously. But only recently, the federal government tabled a Bill in Parliament, which if passed, will replace the existing consumer protections with a system that makes it the borrower's business to get it right. It's back to the bad old days of caveat emptor or buyer beware, with the government explaining it is designed to stimulate the downturn in loans due to covid. Trouble is, there is no downturn. New loans have skyrocketed, despite covid. We don't know whether the consumer protections have played a part, but it's this type of gobbledegook that government hopes will bore you witless. Jeff Morris, the former CBA financial adviser and whistleblower, and those who stepped forward with the

help of the Financial Services Unions must be furious! I know I am.

In October there was a glimpse of how being kinder or even more strategic might look, when the Australian Federal Police decided not to prosecute journalists Dan Oakes and Sam Clark for publishing the "War Logs" of alleged war crimes in Afghanistan. But that light bulb moment — if that's what it was — did not extend to Christian Porter. He stubbornly refuses to drop the prosecution of David McBride because, but for McBride, there would not be a Brereton report, which accepts the crimes were committed and covered up. Which is why it will not cop being humiliated by the truth that disturbs its own world view of itself. I wonder whether over time that special prosecutor's office will be little more than a place to bury the crimes anew. If you need convincing, recall how strongly Scotty from marketing pushed the line that our disappointment with our SAS troops was the main game. He perhaps rightly knows that an annual report about the difficulties involved with bringing a prosecution to court will calm most fears.

If anything, Porter has become even more obdurate as the public campaigns for Witness K, Bernard Collaery, David McBride and ATO whistleblower Richard Boyle have grown in size and significance throughout 2020 due to the efforts of the COSOCK alliance and an attentive media, keen to see journalism survive. Funnily enough this is one instance in which the covid-19 restrictions with smaller numbers, safe distancing and masks have played to their advantage, with even small rallies looking quite substantial. It is amazing really what a few props will do to get media attention!

So, what do I want? I want all those in the know — those who have loyally, but misguidedly kept these secrets for far too long; those, who wield the power that comes with withholding truth from others considered not so special and those, sharing gossipy secrets for personal gain — to openly, start openly acknowledging the truth. Only then will Christian Porter appreciate that the government's best interests lie in coming out in the open as China did, when it copped it sweet for the greater good.

BOOK REVIEW

Secret-spillers

A review of Jason Ross Arnold, *Whistleblowers, Leakers, and their Networks*

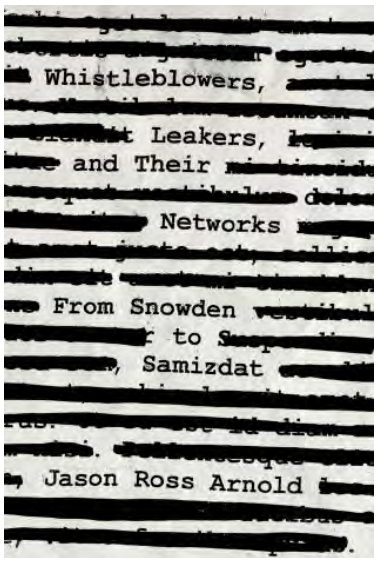
Reviewed by Brian Martin

IN THE SOVIET UNION under Stalin, defying the regime could be life-threatening. After Stalin died in 1953, there was a "thaw" under Khrushchev, and before long a number of dissident publications began to be written and circulated. They were called samizdat. The editors took great risks — and so did their informants. There were remarkable networks connecting citizens who reported on abuses to the editors. A question: should someone providing information for samizdat editors be called a whistleblower?

In the 1980s, an organisation called WITNESS began providing cameras to people living under repressive regimes, plus training in using the cameras, to enable them to record human rights abuses that WITNESS could publish. With the advent of the Internet and cheap videocameras, WITNESS expanded its activities to include streaming of videos. Images of abuse often have a greater impact than text, so WITNESS was able to have a significant impact. A question: should an individual recording video evidence of human rights violations be called a whistleblower?

On some farms, animals are treated cruelly. Some animal activists have sought to expose this by sneaking into farms, taking photos or videos, and then exposing the cruel treatment to the world. In the US and Australia, animal-reliant businesses have fought back by pushing politicians to pass laws making entry to farms or recording of activities to be a criminal offence. In the US, these are called ag-gag laws. A question: should someone sneaking into farms to obtain evidence of animal cruelty be called a whistleblower?

You can learn a great deal more about each of these issues from a 2019 scholarly book by Jason Ross Arnold titled *Whistleblowers, Leakers and their Networks: from Snowden to Samizdat.* He has chapter after chapter dealing with "secret-spilling," with special attention to the networks involved. A person who observes and records an abuse is one node in a network. Also involved are those who pass on the information, verify it, put it into an accessible and understandable form, and publish and promote it — and maintain the networks to enable this process. To leak information is pointless unless there's someone willing to take notice.



As indicated by the title of his book, Arnold is concerned with whistleblowers and leakers. His approach is rather different from that familiar to members of Whistleblowers Australia, so let me explain. He thinks of whistleblowers as secret-spillers, as people who alert the public to issues that authorities would rather keep hidden. This nicely captures the cases of informants for samizdat, WITNESS and animal rights groups, but is quite different from the usual experience of employee whistleblowers.

Arnold sets up strict requirements for someone to be called a whistleblower. He says they should carefully assess the implications of their revelations, including the possible harms they may cause, especially to the organisation whose actions they are exposing. He says they shouldn't release any more information than necessary.

> A tough evidentiary standard forces would-be whistleblowers to carefully consider whether their disclosures really do support their allegations. It asks them to consider the real possibility that the evidence is faulty or incomplete. Would it persuade a jury to convict or otherwise sanction the accused?

> One likely consequence of the more widespread adoption of a strong burden of proof standard is less leaking. If more would-be whistleblowers reflected on the quality of their evidence and the costs of disclosure, fewer of them would probably proceed. (p. 25)

He applies this framework to Snowden and WikiLeaks, finding their actions fall well short of his expectations for being whistleblowing-worthy. In his detailed analysis of these cases, he sounds like a prosecutor on behalf of the US government, accepting all claims made by intelligence officials (do they never lie?) while not mentioning crimes by the US government. Consider, for example, the 2003 invasion of Iraq, considered by many experts to be illegal according to international law. There were whistleblowers about the invasion including Andrew Wilkie in Australia and Katherine Gun in Britain. It's too bad that Arnold didn't consider their cases.

In discussing WikiLeaks, Arnold looks only at the leaks by Chelsea Manning — for example the notorious collateral murder video — and finds they were not sufficiently justified. He doesn't mention WikiLeaks' publication of information about numerous other episodes from countries across the world, including repressive states. It almost seems that Arnold sees whistleblowing from the perspective of national security, specifically US national security as interpreted by the government. He doesn't discuss what happens when protecting US national security harms other governments, foreign corporations, and people — think again of the invasion of Iraq.

Arnold puts the burden of responsibility for the consequences of leaks on the leaker. This seems strange considering that most leakers rely on others, namely on networks, which are central to Arnold's analysis. The leaks by Snowden and Manning obtained worldwide publicity largely due to mass media coverage, which means that journalists and editors bear a considerable portion of the responsibility for the impact of the leaks. However, Arnold gives little attention to their responsibility, focusing on the leakers.

There is another category of leaker: politicians and high-level government officials who give information to journalists for the purpose of personal or political advantage. These are very different from what might be called public-interest leakers, like Manning and Snowden, who have nothing personal to gain from their actions. However, Arnold does not discuss the much more common self-interested leaking by individuals in positions of power. Perhaps they should be told they need first to weigh up the potential harm resulting from their disclosures.

Most employees who speak out in the public interest do so initially to bosses or others inside their organisations. These sorts of whistleblowers hardly feature in Arnold's book. Furthermore, many of these employees do not think of themselves as whistleblowers: they say they were just doing their job. Many of them might be called inadvertent or unintentional whistleblowers. They reported a problem, experienced reprisals and only then figured out that they are being treated like a whistleblower — badly. They were hardly in a position to carefully weigh up the consequences of their disclosures. They are not secret-spillers except in a narrow sense. Instead, they point to issues or problems that they think deserve attention. They are not exposing secrets to the public but are raising concerns to figures in authority and asking for their concerns to be investigated and addressed.

Arnold considers that agencies such as ombudsmen and auditor-generals are *inside* the organisation. Some organisations do have internal mechanisms like this, but there are plenty of independent agencies. For Arnold, all such agencies are *internal* recipients of disclosures while politicians and journalists are external recipients. He would like would-be whistleblowers to use internal channels and think carefully about the risks and benefits of disclosure — risks and benefits for the organisation on which they are blowing the whistle — before going public.

Arnold assumes that the label "whistleblower" is entirely positive.

> Individuals considering spilling secrets in the late twentieth century not only had numerous communications and collaborative options, but they also had the opportunity to *become* whistleblowers — widely respected modern heroes. … While some may have craved fame and respect, many others probably found the identity's generally positive sheen as a way to validate their well-intentioned impulse to blow the whistle. (p. 190)

This will be news to many who do not want to be so labelled. For years "whistleblower" was at least partially derogatory, in the same general category as the terms dobber, snitch and informer. With his view that "whistleblower" is always a valued role, Arnold continually returns to the question of whether the label should be applied, for example in relation to samizdat or WITNESS. However, for most of those involved in challenging repressive regimes, exposing human rights abuses and revealing the ill-treatment of animals, whether they are called whistleblowers is unlikely to be a major concern. They can just as easily be called dissidents, activists or human rights campaigners.

In practical terms, calling something whistleblowing is most important when legal protections are involved, and there are no legal protections for any of the major cases Arnold discusses, including those of Snowden and Manning. This is to set aside the question of whether whistleblower protection works in practice. Far too often it doesn't.

Arnold's book is useful for stimulating thought about the efforts of activist networks that oppose repression, human rights abuses and animal cruelty. But it is unfortunate that this useful material is tied to a peculiar conception of whistleblowing. The book would have better been titled *Secret-spilling.*

Jason Ross Arnold

Two alarming assaults on freedom by a government that spruiks liberty

Brian Toohey
Sydney Morning Herald
21 January 2021

COALITION POLITICIANS who champion Donald Trump's right to free speech have passed numerous laws making it a serious criminal offence to exercise this right in Australia. Labor parliamentarians have also helped pass laws criminalising speech that's clearly in the public interest or simply innocuous.

When Prime Minister Scott Morrison was invited at a recent press conference to condemn far-right conspiracy theories promoted by government members such as George Christensen, he refused. He also defended another Liberal backbencher, Craig Kelly, who has undermined the government's health message by spreading false information about COVID-19. At the time, Morrison said: "There's such a thing as freedom of speech in this country and that will continue."

In fact, there are severe constraints on free speech in Australia, more so than in North America or Western Europe.

The Coalition government's 2018 security laws make it an offence to leak, receive or report a wide range of "information, of any kind, whether true or false and whether in a material form or not, and includes (a) an opinion and (b) a report of a conversation." Another clause makes it a serious crime to say anything that harms "Australia's foreign relations, including political, military, and economic relations." Even if ministers should sometimes be circumspect, other people should be free to criticise any country without resorting to disinformation.

Jail sentences for some offences can be 15 or more years, even when little genuine harm results. There is no recognition that leaked information has never killed anyone in Australia. In contrast, secret intelligence generated by Australia and its allies has led to innocent people, including children, being killed in Afghanistan and elsewhere. Parliamentarians have endorsed the serious erosion of core liberties over recent years. The rot set in when they abjectly acquiesced in the Australian Federal Police's raid on Parliament House in 2016, with police accessing IT systems and seizing thousands of nonclassified documents to search for the source of leaks to a Labor opposition frontbencher.

The leaks revealed problems with rising costs and delays in the National Broadband Network — information that should have been public.

In an earlier era, ASIO and the AFP would never tap phones in Parliament House, let alone raid an institution at the pinnacle of Australia's democratic system. The Parliament should have found the AFP in contempt. Instead, the politicians squibbed it and the AFP was emboldened.

Last July, after a protracted investigation, the AFP recommended charging an ABC journalist Dan Oakes, coauthor of the 2017 series "The Afghan Files," which exposed alleged war crimes committed by Australian special forces in Afghanistan. In October, the prosecutor declined to proceed.

Dan Oakes

The law should clearly state the AFP should not conduct an extensive pursuit of a journalist who was unambiguously acting in the public interest. Undeterred, the Morrison government is pushing for more powers that undermine free speech and civil liberties. Its International Production Orders bill would give ASIO and the AFP the right to order communications providers in "like-minded" countries to produce any electronic data they request and remove encryption. One downside is that the FBI and a wide range of American law-enforcement and security bodies will have reciprocal rights to access private data held by Australian people and corporations. A big stumbling block is that the US law, called the CLOUD Act, prohibits other countries accessing American data if they have weaker privacy and civil liberties protections than the US. Australia falls into that category. The protection in European countries is even stronger than in the US.

In a bold move, Home Affairs Minister Peter Dutton last month introduced a bill creating extraordinary new powers to affect a wide range of people, not just paedophiles as the government claims. The bill covers all crimes with a jail sentence of three or more years. This includes whistleblowers and journalists and innocent people expressing an opinion that falls foul of foreign influence laws.

If passed by our politicians, Dutton's bill will give the AFP and Australia's Criminal Intelligence Commission the ability to covertly take over a person's online account to gather evidence of a crime. Even more disturbingly, they will have an unprecedented "data disruption power" to add, copy, delete or alter data on the internet.

Law Council president Pauline Wright described the proposed powers as extraordinary. She said allowing a member of the Administrative Appeals Tribunal to issue "disruption warrants" is of "particular concern" — only superior court judges should be able to make such orders.

Both these proposed new powers should be severely curtailed. No Australian government should be able to destroy individuals' online data without a court finding them guilty of a crime. Nor should foreign security agencies be allowed to access Australians' private information under the US Cloud Act.

Brian Toohey is author of *Secret: the making of Australia's security state.*

How a whistleblower exposed Crown

Nick McKenzie
The Age, 9 February 2021

LONG AFTER interviewing former Crown Resorts staffer-turned-whistleblower Jenny Jiang about the casino giant's secretive internal operations, a phrase she had uttered after quietly crying on camera was still ringing in my head.

Jenny Jiang
Credit: Daniele Mattioli

Crown, said Jiang, regarded its China-based staff like a "used napkin you throw in the trash can."

The Bergin inquiry in NSW on Tuesday made a similar finding, albeit using official terminology, and not only about Crown's regard for its staff in China, who were told to lure high-rollers to Australia in likely defiance of Chinese law. Commissioner Patricia Bergin, a former Supreme Court judge, also savaged Crown's disregard for corporate governance and the Australian laws supposed to prevent casinos facilitating money laundering.

Crown's fusion of corporate greed and arrogance with its disrespect for the law and the welfare of its staff now threatens its operations not only in Sydney but, if Premier Daniel Andrews applies some long-overdue oversight, in Melbourne too.

Crown's directors once sought to trash the reputation of Jiang (and myself) by falsely implying we had paid her for Jiang's 2019 interview with *60 Minutes*, *The Sydney Morning Herald* and *The Age*, or, that she had demanded large sums of money from Crown — also found to be false — but now it is these directors' reputations that are soiled.

Jiang was one of a number of people I interviewed in 2019 as part of a lengthy investigation into the way Crown had gone rogue to lure Asia's biggest gamblers to its casinos. A trove of leaked emails, along with briefings from agencies here and overseas, court filings and business records, told more of the picture. The information revealed how Crown had partnered with multiple organised crime bosses who control high-roller gambling tour businesses. In doing so, it also engaged in inappropriate dealings with politically exposed persons with shady backgrounds, including the cousin of President Xi Jinping.

I also revealed how Crown had facilitated money laundering via two companies, Southbank and Riverbank, and given an alleged organised crime-linked business, SunCity, its own gaming room in Melbourne.

Crown's reaction to our revelations was to slander Jiang and my reporting in full-page advertisements published in both News Corp newspapers and our own. Behind the scenes, directors like John Alexander and Andrew Demetriou continued this white-anting.

Perhaps they were too used to swatting away media scrutiny, like that applied forensically by former Four Corners reporter Marian Wilkinson or Richard Willingham of the ABC.

Victoria's then minister for gaming Marlene Kairouz downplayed the scandal. Victoria's gaming regulator did what it has done for most of its existence: very little.

But the NSW gaming authority called on respected senior judge Patricia Bergin to examine the allegations in a commission of inquiry. One by one, each central allegation we had aired was examined and upheld. Directors such as Alexander and Demetriou were exposed as arrogant and ill-prepared. Bergin even expressed personal outrage at Crown's treatment of Jiang, extracting an apology from company chair and former Liberal minister Helen Coonan (who is among the few senior Crown figures left with her reputation intact).

While the Bergin inquiry's finding that Crown is unfit to hold a NSW gaming licence is welcome, it is imperative it doesn't obscure the other failings exposed by the scandal. Anti-money laundering agency Austrac did too little too late, only launching a significant probe into Crown after our expose. It remains ongoing. The Victorian gaming regulator, which missed so much of what was uncovered by Bergin and the media reporting, has been exposed as ineffective. Much of the conduct Bergin examined happened within Crown's Melbourne business.

Patricia Bergin

Outside of Bergin and her formidable counsel assisting Adam Bell SC, the only Australian agency that was effectively attacking Crown's facilitation of organised crime is the secretive Australian Criminal Intelligence Commission. Just hours after Crown ran its full-page attack advertisements, the ACIC chief executive Michael Phelan released a blistering public statement that made it clear that Crown and other casinos were indeed facilitating international money laundering. The ACIC has now all but shut down SunCity's multi-billion-dollar operations in Australia.

When Jenny Jiang decided to risk plenty and blow the whistle on Crown in 2019, she explained that she wanted the company held to account for its actions. It has taken almost two years, but that accountability has finally arrived.

Targeted by mining mafia: whistleblowers

U Sudhakar Reddy
Times of India, 4 March 2021

WHISTLEBLOWERS and locals of Guntur who filed complaints in the illegal limestone mining case said they are being beaten up by illegal mining gangs or implicated in false cases.

Guntur: tourism image

Whistleblower K Guravachary of Pidiguralla, who first filed a PIL (Public Interest Litigation) in 2015, told TOI, "I was badly beaten up by the illegal mining gang. When I sought police help, they were shifting me from one police station to another. For 20 days, police hid me. The CBI has recorded my statement," he said.

Mining in Guntur

TN Sharma, a co-accused in the mining scam, said then Gurazala MLA Yarapathaneri Srivivas Rao and his followers had threatened him in April 2014 to hand over his family-owned property of limestone quarry. "The AP Brahmana Seva Samakhya had represented the matter to the Crime Investigation Department. The CID wrote a letter to Guntur rural SP enquiring about the life threat to me. False cases were filed against me but I obtained bail. A false case of SC, ST Atrocities Prevention Act was also booked on me. I went underground to Bangkok and Nepal to save my life," Sharma told TOI.

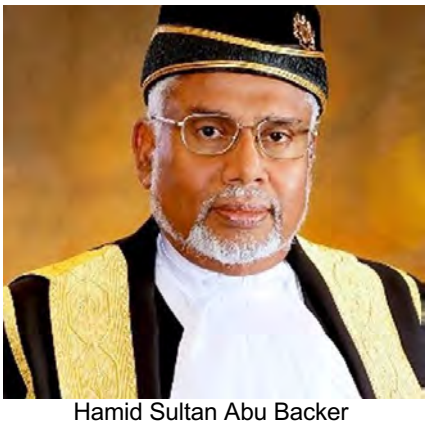
Another whistleblower and former MLC TGV Krishna Reddy, who also filed a PIL, was booked in a fake murder case.

He said whoever opposed illegal mining was targeted. "Even police, revenue and mining officials are acting against whistleblowers," he said.

Suspension of "whistleblower judge"

FMT Reporters, 6 February 2021

THE SUSPENSION of the "whistleblower judge" is a big blow to Malaysia's efforts to protect those who are willing to come forward to expose corruption and misconduct, says the Center to Combat Corruption and Cronyism (C4).



Hamid Sultan Abu Backer

It said the fate of Court of Appeal Judge Hamid Sultan Abu Backer who has been suspended until retirement over his affidavit alleging judicial misconduct would discourage future whistleblowers as they will now be less likely to come forward for fear of punishment.

Hamid was suspended for six months by the Judges' Ethics Committee (JEC) after a hearing which he refused to attend as he wanted to challenge the composition and constitutionality of the committee.

His suspension took effect from yesterday and will run until Aug 27 when he retires from office. Three years ago, he had alleged that there was judicial interference in several high-profile cases.

The centre said it was of major concern that the JEC continued with the proceedings without his presence despite his lawyer requesting an adjournment due to his ill-health and his hearing with the Court of Appeal yesterday.

"According to the rules of natural justice, every litigant must be given the right to be heard. This right was overlooked by the JEC and not afforded to Hamid," C4 said in a statement today.

"Never before in our history has a sitting judge so openly called out potential misconduct within the judiciary. Hamid must have known that there would be backlash, but the sheer lack of support or protection for this act of whistleblowing is astounding."

THE CENTER TO COMBAT CORRUPTION AND CRONYISM
C4
clean conscious competent credible

The centre said instead, his courage had been used to punish him to "drive fear into others who may do the same."

It pointed out that this action had shown that the Whistleblower Protection Act 2010 was essentially toothless as it did not cover these circumstances.

"With this verdict, we demand answers as to what will become of Hamid's serious revelations. During the Pakatan Harapan government, an establishment of the Royal Commission of Inquiry (RCI) was promised to investigate the allegations.

"But there has been complete inaction from the current government on this. C4 demands that there are no further delays in investigating the purported abuses. It is unthinkable that allegations of such severity can be quietly left to be forgotten and eventually swept under the rug," it said.

C4 said the judiciary is a fundamental cornerstone of our democracy and all efforts must be taken to defend its integrity and independence.

As such, it said, Hamid should be granted his right to be heard, adding that punitive action ought to be exercised only when investigations show mala fide or ill intentions.

DR Congo: Quash whistleblowers' death sentences

Human Rights Watch, 9 March 2021

Authorities in the Democratic Republic of Congo should quash the death sentences imposed in absentia on two whistleblowers who provided information on corruption. Congolese authorities should instead investigate the allegations of criminal activity reported by Gradi Koko and Navy Malela, two former bank employees who exposed alleged illegal financial practices and money laundering.

Koko and Malela both worked in the audit department of Afriland First Bank CD, the Congolese subsidiary of Afriland First Bank, whose headquarters are in Cameroon. Koko said that in 2018 his superiors at the bank directly threatened him after he reported serious financial irregularities internally. In the face of these threats, he and Malela shared a trove of data and documents with the Platform for the Protection of African Whistleblowers (PPLAAF), a nongovernmental organization based in France. The information they provided led to a series of investigative reports in July 2020 by PPLAAF, Global Witness, and media outlets, including Bloomberg, Le Monde, and Haaretz.

"Congolese authorities have made a mockery of the rule of law by prosecuting two whistleblowers for revealing information of major public interest that's critically important to Congolese institutions," said Thomas Fessy, senior Congo researcher at Human Rights Watch. "Their convictions should be quashed, and their revelations should be the basis for independent and impartial investigations."

Thomas Fessy

The published reports allege that Israeli billionaire Dan Gertler, a long-time friend of former Congo President Joseph Kabila, established a money laundering network with Afriland First Bank CD at its center. The scheme purportedly helped Gertler evade United States government sanctions against him and to acquire new mining assets in Congo.

Koko fled Congo in 2018 and sought asylum in Europe; Malela followed in early 2020. On February 26, 2021, they revealed that they were the source of the reports.

Gradi Koko, right, and Navy Malela, former staff of the audit department at Afriland First Bank CD, on 17 February 2021 in Paris, France
Credit: Cyril Marcilhacy

"I am not an armed rebel chief and my denunciations are useful to Congo, so why should I be sentenced to death?" Koko told Human Rights Watch by phone. "I fear reprisals, and I fear for my family in Kinshasa."

On February 25, representatives for Afriland and Gertler told journalists at a news conference in Kinshasa that the Tribunal de Grande Instance in Kinshasa had sentenced the whistleblowers to death in absentia on September 7 for "forgery," "theft," "private corruption," "breach of professional secrecy," and "criminal conspiracy." Neither Malela nor Koko — or their lawyer — had knowledge of the court hearing. The trial violated the men's right to a fair trial under international law, Human Rights Watch said.

Shortly after the February 25 news conference, a Congolese news outlet posted a copy of the verdict online and shared it on social media. "How could we possibly discover the copy of this judgment, of which we had no knowledge, on social media?" Koko said.

The verdict reiterated unfounded and baseless allegations against PPLAAF and Global Witness that first emerged after publication of their July 2020 report. It included claims made in video clips shared by newly created social media accounts that the organizations had used underhanded methods to collect their information. In a statement issued on March 5, Global Witness said the "the false and highly defamatory allegations … [had] no factual basis whatsoever."

On February 26, new investigations based on another batch of leaked bank records reported more details about Gertler's elaborate system of alleged money laundering, and showed that Afriland First Bank CD also harbored accounts for several companies tied to alleged financiers of Hezbollah and people suspected of links to North Korea's armament program. Other records showed large sums of money allegedly transiting through the personal accounts of some Congolese officials.

Afriland First Bank CD denied all allegations of wrongdoing to Radio France Internationale. Gertler has also rejected all accusations of corruption and sanctions violations and said that Koko and Malela were "victims" of "appalling conduct" by antigraft organizations.

Also on February 26, a fake YouTube channel was created impersonating the anticorruption watchdog Transparency International. The channel posted videos targeting anticorruption organizations working in Congo. It followed a months-long online smear campaign and abuse against the investigative consortium that revealed the alleged money laundering ring in 2020.

The latest revelations came a month after it emerged that Gertler had been granted a special license by the Trump administration in its waning days, effectively lifting US sanctions against him for one year. On March 8, 2021, in response to domestic and international outrage, the Biden administration revoked this license, reiterating that Gertler had "engaged in extensive public corruption."

The United Nations Joint Human Rights Office and the embassies of Belgium, France, and the US have all raised concerns about the sentences handed down against Koko and Malela. Human Rights Watch opposes the death

penalty in all circumstances because of its inherent cruelty.

Congolese authorities should immediately exonerate Koko and Malela or risk deterring future whistleblowers, Human Rights Watch said. The government should provide both men's families in Congo with physical protection, while any intimidation and harassment against them should be investigated.

The government should investigate and appropriately prosecute the allegations of illegal practices within the banking system.

"Whistleblowers take enormous risks to contribute to a healthy democracy and defend the public good," Fessy said. "The real culprits should be found among those whose impunity allows them to siphon Congo's wealth and hinder its development."

The world abandoned COVID-19's best antidote: whistleblowers

Tom Devine and Samantha Feinstein
The Hill, 15 March 2021

DR. WENLIANG LI is now a Chinese folk hero. In the winter months of 2019, before the deadly pandemic took hold across the world, Dr. Li spoke up against his government's suppression of the coronavirus SARS-CoV-2. The retaliation he suffered as a result was short-lived; Dr. Li was among the first of the millions worldwide who have died from the disease. While the public outcry after his death led to some accountability, scores of other whistleblowers in China still faced retaliation for stepping forward.

China hardly is alone. Whistleblower suppression has spread across the globe as fast as the virus. Ironically, the world has united around efforts to stop the spread of the virus, but not of whistleblower suppression.

Governments around the world left whistleblowers in a legal lurch before the pandemic even started. We at the Government Accountability Project, along with the International Bar Association, studied whether 37 national whistleblower laws from around the world provide credible rights.

Our report found that many laws are Trojan horses, traps structured to expose dissenters without offering them meaningful protection.

Even the most well-written laws often are irrelevant. Out of 37 countries with whistleblower laws passed before 2018, 89 percent had fewer than 15 publicly reported legal decisions, and 22 countries had none. For those who try to exercise their rights under their country's law, the track record is spotty. Whistleblowers worldwide won their cases only 21 percent of the time — in the United States, less than 10 percent.

The system was ill-equipped to handle massive influxes of coronavirus whistleblowers: from doctors warning of the dangers, to tipsters flagging fraud, to poultry workers reporting unsafe working conditions. Coronavirus whistleblowing in the United States may have increased whistleblower intakes by 30 percent at the Department of Labor. Yet the United States's whistleblowing protections have not changed to meet the challenge.

In response to the Great Recession of 2008, Congress passed the $700 billion American Recovery and Reinvestment Act of 2009. The stimulus package provided best-practice whistleblower protections for workers at companies receiving the funds to report waste, fraud and abuse. The law prohibited a broad range of retaliation, allowed access to a jury trial in federal court after administrative exhaustion with the Office of the Inspector General, and included best practices for burdens of proof and complete remedies including compensatory damages, attorneys' fees and expenses.

In the aftermath, Inspector General Peggy Gustafson, in her December 2011 congressional testimony before the Ad Hoc Subcommittee on Contracting Oversight of the Senate Committee on Homeland Security and Governmental Affairs, credited the strong whistleblower protections in the Recovery Act for the low level of fraud in the act. She acknowledged the important role whistleblowers play in identifying waste, fraud and abuse before it festers into scandal. Yet none of the enacted or pending coronavirus packages includes this accountability safeguard for what could be $6 trillion in spending.

The lack of whistleblower protections in COVID-19 stimulus laws is not because Congress members have not tried. Last fall, then-Senator Kamala Harris introduced the COVID-19 Whistleblower Protection Act, which would institute strong whistleblower protections for employees or former employees of recipients of funds under the CARES Act or other legislation meant to address COVID-19, including confidentiality and protection against gag orders; a similar bill was introduced in the House by Representatives by Jackie Speier and Jamie Raskin. But the bills did not advance through the legislative process and were not included in the Biden administration's stimulus proposal.

Sadly, U.S. passivity has been matched by other national governments. All have failed to appreciate and understand the life-and-death significance of the truth during the pandemic. A global pandemic requires rights with extra teeth to protect emergency whistleblowing. So far, the response has been virtually nonexistent, except for suspect hotlines without reprisal protection. It is unfortunate that, while the pandemic's spread is slowing, credible rights for whistleblowers to prevent the next wave are at a standstill. As we

brace for emergencies to come, the warning flares could be withheld and the death knells unheard.

Whistleblowing can save lives. But it is unrealistic to expect that whistleblowers will protect the public when they cannot protect themselves.

Tom Devine is legal director and Samantha Feinstein is deputy international director at the Government Accountability Project.

Potential whistleblowers deserve more support. Their moral choices protect our democracy.

We've started "Bearing Witness" to support people of faith who are potential whistleblowers.
We hope more workers will find the courage to step forward.
Louis Clark and Brian McLaren
USA Today, 13 February 2021

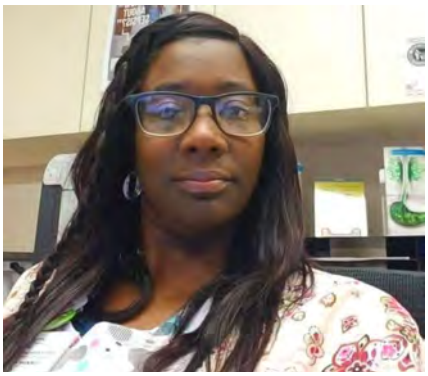
SOMETIMES government wrongdoing is on full display. We all witnessed the thousands of aggrieved supporters of then-President Donald Trump supporters, amped up on government-issued lies and rhetoric, hold the Capitol Building and Congress captive while millions of us were held captive by our television screens. But far more often, crimes and abuses of power occur behind closed doors, and the only thing standing between chaos and democracy may be one voice brave enough to bear witness to truth.

For decades, at every level of government and in every political party, whistleblowers have bravely called out abuses of power and policy. Whether publicly or privately, they have bravely shed light on illegality, abuse of authority, and threats to public health and safety when they refuse to obey illegal orders; and they report waste, corruption and cover-ups that weaken our democratic norms and institutions.

Whistleblowers protect our democracy

We were struck by a recent op-ed by military analyst Daniel Ellsberg, who famously disclosed the Pentagon Papers and revealed that the American public had been misled about the escalation of the Vietnam War. Ellsberg wrote that he wished he'd done more back then and, with striking urgency, called for others to come forward in the final days of the Trump administration amidst fears about Iran: "I am urging courageous whistleblowing today, this week, not months or years from now, after bombs have begun falling. It could be the most patriotic act of a lifetime."

Whistleblowers, like Ellsberg and thousands of others, are patriots on the frontlines of preserving the essential tenets of justice that transcend political parties and partisanship. They have protected our democracy, including during the Trump era. You may not recognize their names, but it was a youth care worker, Antar Davidson, who blew the whistle on separating immigrant children from parents. Nurse Dawn Wooten came forward with explosive allegations that women in immigration detention were receiving hysterectomies without informed consent.



Dawn Wooten

Drs. Scott Allen and Josiah Rich warned that the uncontrolled spread of COVID-19 in immigration detention facilities posed a danger to workers, detainees and the public; TSA official Jay Brainard reported COVID-19 procedures at airports put the public at risk; and Dr. Rick Bright called out the administration's touting of bogus COVID drug therapies.

Whistleblowers warned that the Trump administration was turning the independent Voice of America into a pro-Trump propaganda outlet. Anonymous whistleblowers revealed that former Attorney General William Barr, in an unprecedented move, reversed career prosecutors and refused to allow a grand jury investigation into the police shooting of 12-year-old Tamir Rice. And perhaps most infamously, whistleblowers revealed President Trump pressuring Ukraine to interfere with the 2020 election, which prompted his first impeachment.

Jay Brainard

There are many more. Whistleblowers speak out often at great professional and personal risk of retaliation meant to undercut their credibility and intimidate others from coming forward. They face complex threats and legal challenges. The strains on their families, relationships and friendships are intense. They may face stigma in their communities.

Whistleblowing is complex and receiving the right advice early on can save a lot of anguish. The people who blow the whistle need — and deserve — our informed support.

Help for potential whistleblowers

In our experience, many employees who witness wrongdoing find their moral compass and strength in faith. Bearing witness to abuses puts them at a moral crossroads, which may prompt potential whistleblowers to seek support from their faith communities, and in particular, clergy who are bound by confidentiality but are not experts on whistleblower rights, risks and options. Knowing this, we have taken our decades of experience representing and advocating for whistleblowers, and joined with leading faith-based organizations to launch Bearing Witness. Bearing Witness offers free resources to faith leaders, clergy, and faith-based organizations and communities, to support potential whistleblowers with informed advice and wise counsel.

We all bore witness to the Capitol mob draped in American flags, Kevlar and camo, stoked by one president's defiant abuse of office. The Capitol

building is intact, but our democracy has serious cracks.

Brave souls who have witnessed, or will bear ongoing witness, to hidden crimes and cover-ups can help heal those cracks by holding power and privilege to account — whether they are in elected office or pulling strings behind the scenes; dangerous allies in media that have sold their souls, or foreign invaders who wish to capture ours. They are catalysts of accountability. And accountability remains in too short supply.

With networks of faith communities now adding their moral support for whistleblowing, we hope that more employees will find the courage — and expert support — to disclose government wrongdoing. Our democracy depends on it.

Louis Clark, an ordained deacon in the United Methodist church, is the founder, executive director and CEO of the Government Accountability Project. Brian D. McLaren (@brianmclaren) is an Auburn Senior Fellow and the author of over 20 books, including this year's Faith After Doubt.

Silence isn't golden, whistleblowers are

Most employees do not leak information because they want to but because valuable insights are ignored.

Margaret Heffernan

Financial Times, 19 February 2021

LAST WEEK, when Extinction Rebellion targeted LinkedIn, it wasn't trying to bring the organisation to its knees. It wanted to connect with potential whistleblowers inside Shell, Exxon, HSBC and the UK's HS2 high-speed railway. LinkedIn ads targeted those companies' employees, alerting them to a secure "truth telling" platform to report greenwashing. On the same weekend calling cards were delivered to smart London neighbourhoods, encouraging readers to blow the whistle wherever climate change wasn't being addressed seriously.

The activist group had tapped into the zeitgeist. Last year, whistleblower cases asserting unprofessional standards in financial services rose by 35 per cent. Deloitte has warned of a new "whistleblower environment" in the pandemic that it attributes to greater workplace health concerns, record unemployment and the compliance problems of staff working from home. (At the same time, Deloitte faced its own whistleblower, who has alleged audit faults in the company's Beijing office.) Problems at Rio Tinto and at Boeing have also been prompted or exacerbated by information leaked by insiders.

Deloitte has recommended heightened vigilance and compliance. Yet that might not be the way to stop whistleblowers. Leaking confidential information is not something employees do easily, or because they want to. They usually do so when they have tried to draw attention to concerns and been ignored.

While the popular image of the whistleblower is typically an eccentric loner, the truth is more prosaic: whistleblowers are likely to be loyal employees, passionate about high standards, who go outside their organisation as a last resort when nobody takes them seriously. They aren't defiant troublemakers; they're disappointed believers.

There's often an asymmetry in the portrayal of such cases. Tragic endings make more memorable stories than those where problems get fixed. Many remember Joe Darby whose career was ruined when Donald Rumsfeld revealed who had alerted the military to the cruelty at Abu Ghraib. Or Jeffrey Wigand, a chemist who claimed his life was threatened when he leaked documents about tobacco tampering. Or Steve Bolsin, who said he was virtually driven out of the UK after blowing the whistle on surgeons at a paediatric cardiac surgery. These are dramatic stories where the mighty institution tramples over the lone seeker after truth.

What we don't read about are the cases where concerns and issues are raised, often repeatedly, and resolved. Yet this happens every day. I remember one engineer, uncomfortable with the specifications of a new medical advice, who consulted with colleagues and at the next design meeting asked: was everyone confident the device was safe? The simple question provoked an uneasy silence that catalysed change.

I still think about a senior corporate executive so distraught by the sexual predation of a colleague that he decided to quit. Instead, we explored how to raise the issue safely. His reward for doing so was a promotion, and the predator's exit. Better still, the whole company watched what happened and began to believe change was possible.

The tragic legacy of the whistleblower myth is that it silences people we most need to hear. In any company, many employees have issues and concerns they don't voice. Why are they silent? Often it is because of fear of punishment or the perceived futility of speaking out. That silence represents a huge waste of knowledge.

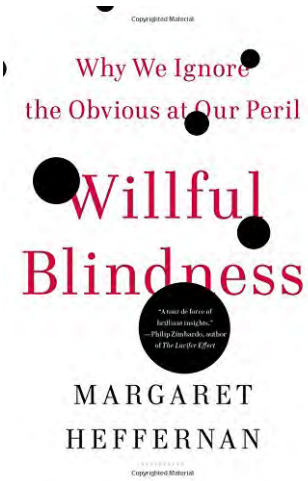
By contrast, companies where people can speak up are organisations

where every employee is an early warning system, where improvement and change are normal.

Companies would do better to listen to whistleblowers than try to shut them up. Telling the truth shouldn't be an exceptional act of courage. Rather than more enforcement, a better investment is to teach worried executives how to speak up constructively, and bosses how to listen with an open mind. One banking executive, on hearing of XR's truth-telling platform, gleaned this at once. "That's great," he told me. "Now maybe they will make better decisions!"

Companies targeted by Extinction Rebellion via LinkedIn and other means, or those alarmed by Deloitte's warning, might rush to tighten up their processes. They would do better to see their workforce as a source of insight and moral compass. When individuals can speak up and be taken seriously, they help companies stay in touch with the society they serve. They then have little to fear from whistleblowers.

Margaret Heffernan



A case of not speaking up

Marissa King

Social chemistry: decoding the patterns of human connection
(London: Hodder & Stoughton, 2020), pp. 216–219

"IT'S DARK OUTSIDE. I can see the lines of lights down below from roads and this thing suddenly lurches and there's a big bang. And then there's another big bang. At that point it started lurching around all over the sky. That was horrendous and my skin just absolutely crawled because … we weren't anywhere near the ground," recounted Chris Thompson, a father of one, who was on a flight returning from a boat show in London. He was seated in lE.

After the plane began to jerk violently, smoke poured into the cabin. Captain Kevin Hunt, a forty-three-year-old veteran pilot, calmly announced that the right engine was experiencing difficulty. He was going to shut the engine down and make an emergency landing at East Midlands Airport. The smoke began to clear. The crew started cleaning up trays and tidying the cabin in anticipation of the landing.

Passengers, particularly those seated at the back of the plane, were confused. Among those worrying that the pilot might be making a mistake was Mervyn Finlay, a bread deliveryman who was returning to his wife and son. He was seated in 21A. He wasn't confused about why the pilot was shutting off the engine. He was confused about which engine. Smoke and fire were pouring from the left engine, not the right.

"We were thinking: 'Why is he doing that?' because we saw flames coming out of the left engine. But I was only a bread man. What did I know?" recalled Finlay.

The passengers didn't say anything. The flight attendants, who could see fire emanating from the left engine, also didn't speak up. Minutes later the Boeing 737 crashed onto the motorway outside the hamlet of Kegworth, less than a thousand meters from the runway. The front section of the plane ripped off as the plane plowed through a field, hitting trees and plunging into an embankment. Luggage flew out of the overhead bins, causing head injuries to most of the 118 passengers. Seats thrust forward, crushing legs. Mervyn Finlay and Chris Thompson were among the survivors of the Kegworth disaster, which killed forty-seven people on January 8, 1989. Mervyn Finlay's "spine was 'left hanging by a thread'." Both of Chris Thompson's legs were shattered.

If the flight attendants or one of the passengers had spoken up, nearly fifty lives could have been saved. But no one did. The pilots had tried to restart the functioning engine that he shut down during the final moments of the flight, but it was too late. The investigation into the crash commented, "Had some initiative been taken by one or more of the cabin crew who had seen the distress of the left engine, this accident could have been prevented."

Human error is the most common reason planes crash. Of accidents caused by pilot error, 84 percent occurred because junior officers were afraid to raise concerns or contradict senior pilots, or there was a lack of monitoring, according to an analysis of crashes between 1978 and 1990 by the U.S. National Transportation Safety Board. To try to prevent tragedies like the one that occurred at Kegworth, crew training programs that encourage lower-ranking crew members to speak up have become commonplace. But they don't seem to be that effective. In roughly half of the cases where flight attendants, pursers, and pilots felt it was necessary to speak up because of safety, they didn't say anything.

Why do people remain silent even when silence can be deadly? Why do they fail to make some of the most urgent immediate human connections they need to make?

Fear. According to Nadine Bienefeld and Gudela Grote, professors of management at ETH Zurich, flight team members do not speak up because they are afraid of damaging relationships and afraid of punishment. As one flight attendant put it, "I didn't want to get into trouble and risk a negative entry in my personal file. I am sure she [the

purser] would have gotten angry if I had told her it was a violation of safety procedures. So I just hoped that I would never have to fly with this one [purser] again."

Nadine Bienefeld

It isn't just in aviation that there is a fear of speaking up. In a study of professionals working in industries ranging from financial services to pharmaceuticals, 85 percent of respondents reported that there had been at least one instance in which they didn't feel comfortable raising an important issue at work. The reasons they gave were similar to those offered by the airline crews: fear of being seen as a troublemaker, damaging a relationship, and experiencing retribution.

Whether people are in the air or at the office, a fear of being seen negatively prevents them from speaking up. Most people want to seem friendly, competent, and smart. While this completely normal human tendency may serve someone well in airport lounges, it can be detrimental or deadly at work.

Marissa King,
author of *Social Chemistry*

The human cost of whistleblowing

Toby Cadman
EUobserver, 16 November 2020

JONATHAN TAYLOR is a British national who, as a lawyer for Dutch firm SBM Offshore in Monaco, uncovered an enormous bribery and corruption scandal that resulted in criminal investigations in five jurisdictions, resulting in fines of more than $800 million, and the imprisonment of a number of individuals.

Despite this, to date, the authorities in Monaco have failed to initiate a single criminal investigation into SBM Offshore or any of its executives.

This is hardly surprising considering SBM Offshore is the largest private employer in Monaco and the small tax haven has created an impenetrable environment based on banking secrecy and surreptitious offshore companies that sits oddly outside the close scrutiny of the European Union and its legal framework.

Monaco, tax haven

Jonathan has the status as a whistleblower and a protected witness and ought to receive all the procedural safeguards that a such witness would ordinarily receive.

Regrettably, he has not. He has been exposed and discarded and that must change.

We rely on people like Jonathan to make the world a better (and safer) place and we need to show whistleblowers and investigative journalists that our fundamental protections and safeguards actually mean something.

On 30 July, Jonathan was arrested on an Interpol Red Notice, issued by Monaco, at Dubrovnik international airport, where he had just arrived for a short holiday with his family.

The Croatian authorities were waiting for him as his flight landed. We do not know who tipped them off, but tipped off they were.

The warrant for his arrest alleged he was guilty of bribery and corruption, offences he was alleged to have committed whilst negotiating his departure from SBM Offshore, after having disclosed details of widespread bribery and corruption by oil executives.

The allegation is that he attempted to extort sums of money from SBM Offshore to prevent disclosures, despite the fact that those disclosures had already been made. The logic is hard to follow for his legal team, let alone a lay person.

Following his arrest in Dubrovnik, SBM Offshore responded to the media confirming that they had dropped their complaint against Jonathan and the Monégasque Prosecutor confirmed that it was not pursuing a charge of bribery and corruption against him.

This was odd, to say the least, as these were precisely the charges set out in the arrest warrant.

Jonathan was held in detention in Dubrovnik, being treated like a common criminal, for several days before being released on stringent bail conditions that now prevent him from leaving the city of and a number of additional conditions, such as reporting to the police twice per week.

Jonathan Taylor

Ping pong

On 1 September, a Court in Dubrovnik, ignoring the abundance of material that we submitted as to his status as a whistleblower and the real risk that he faced if Croatia, ignoring the protections under the European Court of Human Rights (ECHR) in Strasbourg

and the EU Whistleblower Protection Directive (2019/1937), ordered his extradition.

European Court of Human Rights

On 12 October, our appeal to the Supreme Court was partially upheld and returned the matter to the Dubrovnik Court for reconsideration.

The Supreme Court ruled, rather illogically, that the UK should be requested to provide a statement as to whether it sought his surrender pursuant to a European Arrest Warrant and if not the lower Court should rule on the extradition request de novo.

On 30 October, the UK authorities responded confirming that they "will not be making a request" for his extradition.

The Court in Dubrovnik is expected to rule imminently and, if it again refuses to consider the substantial arguments previously submitted, then it will likely order extradition a second time, with the matter then returning to the Supreme Court on appeal, again, the case being pushed back and forth like a game of ping pong.

Ping pong is more fun than bouncing between courts

The UK foreign office has been urged to intervene on the ground that Jonathan is a whistleblower and that he is cooperating with the UK Serious Fraud Office and providing evidence of corruption within SBM Offshore.

On 9 November, the issue was the subject of a parliamentary question to the foreign secretary, Dominic Raab, in the House of Commons, raised by Jonathan's MP, Caroline Nokes, and an additional 18 cross-party MPs. Nokes, a former Conservative party minister, asked the foreign office what steps the UK was taking.

The parliamentary under-secretary of state, Wendy Morton, standing in for the foreign secretary, absent due to Covid-19 self-isolation, was confronted with a barrage of questions that she was not prepared to appropriately address.

She responded to each and every question with the same government line, there was no evidence to suggest that the arrest was connected to whistleblowing and that the Vienna Convention on Consular Relations prevented them from interfering in the internal affairs of other countries.

SBM photo

UK debate

On 10 November, it was discussed in the House of Lords, where similar concerns were raised.

The position advanced by the foreign office is wholly unsustainable and entirely disingenuous.

It claims there is no evidence to suggest that the arrest was connected to his whistleblowing.

Quite apart from our 40-page submission to Interpol and the 47-page submission to the UN, both provided to the foreign office, it would have had to have been an extraordinary coincidence that Jonathan was arrested on the basis of a criminal complaint by the very organisation that he has blown the whistle on for bribery and corruption to the tune of $800m, and that the two were not connected.

Secondly, the UK minister's reliance on Article 55 of the Vienna Convention is flawed.

The requirement is that members of a diplomatic mission respect domestic law and not interfere in the internal affairs of the host state.

This does not mean that the foreign office is prohibited from engaging in dialogue with a foreign state on its treatment of a British national, nor is it precluded from raising concerns about a judicial process.

If it did, the foreign office would have breached it on at least 12 occasions in the past and, indeed, on what basis then did the foreign secretary, this week, call for China's campaign of harassment of the political opposition to stop, for there to be new free and fair elections in Belarus, or for a de-escalation of the situation in Ethiopia.

The Vienna Convention was seemingly not considered an obstacle to those interventions. Further, respecting the law means the domestic laws that govern the host state and laws from which international treaty obligations stem, such as the ECHR rulings and EU directive.

Jonathan is whistleblower. He is a protected witness. He has taken extraordinary steps, putting his own personal safety and the economic security of his family at risk, in order to ensure that those persons who have engaged in corrupt practices on a truly unprecedented scale are brought to justice.

There is no evidence to justify the bringing of criminal charges and, if he were to be extradited, there is a very real risk that he would be the victim of a flagrant denial of justice in Monaco.

Wider meaning

The EU directive prohibits precisely this type of retaliatory action.

Notably, Monaco has failed to initiate a single criminal investigation into highly credible and well documented allegations against SBM Offshore.

In fact, in 2018, it refused to extradite an oil executive to the United Kingdom on the very same charges on which it now seeks Jonathan's extradition.

Finally, we must highlight the fact that it is not just Jonathan's fate which hangs in the balance, it is the very existence of the protections afforded to whistleblowers and investigative journalists the world over.

Whistleblowers Australia contacts

Postal address PO Box U129, Wollongong NSW 2500
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

Previous issues of *The Whistle*
http://www.bmartin.cc/dissent/contacts/au_wba/

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Wollongong contact Brian Martin, phone 02 4228 7860.
Website http://www.bmartin.cc/dissent/

Queensland contact Feliks Perera, phone 0410 260 440, feliksfrommarcoola@gmail.com

Queensland Whistleblowers Action Group
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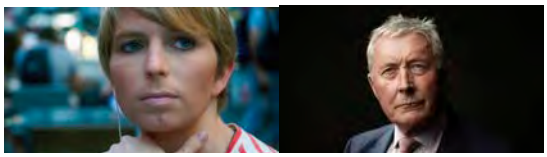
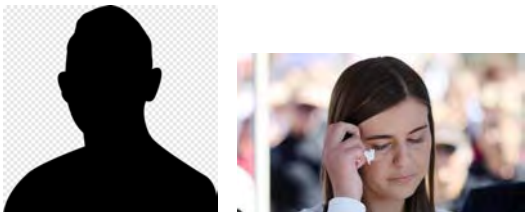
Quiz

Identify the odd ones out.





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. 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

3. Pay by credit card using PayPal to account name wba@whistleblowers.org.au. Use your surname/membership as the reference.

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