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

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Witness K and Bernard Collaery: see pages 2–9

Witness K: some background

Brian Martin

THE MAN KNOWN AS WITNESS K worked for one of Australia's spy agencies. He was tasked with bugging East Timorese government offices during negotiations between the governments of Australia and East Timor over rights to undersea oil and gas. Later, seeing how immoral and deceitful this surveillance was, he revealed it.

The bugging enabled the Australian government to cheat during the negotiations. Rather than doing all it could to assist a small poor neighbour, the government was serving its own interests and the interests of its corporate pals. Witness K blew the whistle on this disgraceful behaviour.

Caught out, the Australian government could no longer cheat. But it never paid any serious penalty for the bugging. Those responsible were never brought to a tribunal, much less a trial. Then, over a decade later, the Australian government brought charges against Witness K and his lawyer Bernard Collaery.

It's useful to look at the Witness K saga in the longer history of Australian government action and inaction over human rights abuses in Indonesia and East Timor. Indonesia had been a Dutch colony and became independent in 1949.

Indonesia is just north of Australia

In 1965–1966, the Sukarno government in Indonesia was overthrown and the military took power. In the process, there was a massive killing campaign against Communists and anyone else who got in the way, with over half a million killed. It was a genocide, the biggest genocide in a country neighbouring Australia. And what did the Australian government do? Nothing much. It seems that government leaders were quite satisfied that Communists were massacred.

During the genocide, General Suharto came to power. His dictatorial rule lasted for over three decades. Were there any efforts by Australian policymakers to promote human rights in Indonesia during his rule? This is unclear. If there were any efforts, they were the sort of quiet diplomacy that is so quiet that it has no noticeable impact.

Geographically, Indonesia is an archipelago, with numerous islands. One of the small islands, to the south, is Timor. Half the island was part of Indonesia. The eastern half, called East Timor or Timor-Leste, remained a Portuguese colony until 1974, when the fascist dictatorship in Portugal was overthrown.

East Timorese nationalists wanted independence. The Indonesian government didn't. The Indonesian military invaded East Timor, with an implicit understanding that the Australian government would not intervene. This led to a war that continued for years. Perhaps one third of East Timor's population lost their lives due to the fighting or starvation.

It was a human rights tragedy just to the north of Australia. What did the Australian government do? It supported the Indonesian invaders. No government in the world recognised the Indonesian occupation of East Timor as legal — except the Australian government.

You might note that I keep referring to the "Australian government" rather than "Australia." The government is not the same as the country or the people. To say that "Australia supported Indonesian sovereignty over East Timor" is to imply that everyone in Australia went along with it. Not everyone did. There were vigorous and outspoken supporters of East Timorese independence from the very beginning.

This is not a simple matter of Liberals versus Labor, because both major parties went along with the policies adopted. The 1965–66 genocide occurred while the Liberals were in power, while the 1975 invasion of East Timor occurred during a Labor government. Some of the strongest supporters of the East Timorese were members of the Labor Party.

In the late 1980s, East Timorese leaders reduced their reliance on armed struggle in the countryside and encouraged civilian resistance in urban areas. In 1991 in Dili, the capital of East Timor, a funeral march became an avenue for protest against the Indonesian occupation. As the peaceful marchers entered Santa Cruz cemetery, Indonesian troops opened fire, killing hundreds of East Timorese. This massacre might never have been known to the outside world except that a number of Western journalists were present. Their testimony, plus their photos and video footage, revealed the brutal repression to the outside world.

Santa Cruz demonstrators before the massacre.

What did the Australian government do to raise awareness about the Dili massacre? Two of the Western journal-

ists present at the massacre were British filmmaker Max Stahl and US photographer Steve Cox. On arriving in Darwin, immigration officials, on instructions from the government, carefully searched their luggage, seeking to confiscate any documentary evidence of the massacre. Wisely, they had entrusted their film to others, enabling it to be smuggled out of East Timor.

General Suharto

In 1998, Suharto stepped down as ruler of Indonesia, and a new era of electoral democracy began. This was not due to Australian government pressure, but rather to popular protest in Indonesia. The Australian government had never encouraged this protest, but instead had supported Suharto's rule throughout his reign.

Celebrating the end of Suharto's rule

In 1999, the new Indonesian government allowed a referendum in East Timor. It overwhelmingly supported independence.

Referendum day in Dili,
30 August 1999

In response, the Indonesian government enabled a brutal attack on East Timor. With more open media access, there was front-page coverage in the Australian media and a massive popular cry for the government to intervene — which reluctantly it eventually did, as the leading group in a UN force. For once, the Australian government made an intervention on behalf of the East Timorese people. East Timor officially became independent in 2002. But in 2004, the poor, tiny nation was again betrayed by the Australian government in the seabed negotiations.

Throughout this mostly sorry saga, the Australian government was able to get away with its kowtowing to Indonesian repression by covering up its role. Only when there was significant publicity did it act against this repression, notably in 1999. The bugging of East Timorese government offices continued the usual pattern of nasty dealing hidden by secrecy. It would have worked in the seabed negotiations except for Witness K. How embarrassing.

The prosecution of Witness K and his lawyer Bernard Collaery can be understood as a warning to others: "Don't dare reveal corrupt and immoral behaviour, because we will come after you and destroy your career and wreck your life." To support this vindictive approach, the government has at its disposal laws against whistleblowing and journalism about national security matters, broadly conceived, plus retention of metadata that enables the tracking down of whistleblowers. Make no mistake, in relation to its own crimes, the government is arming itself with extraordinary powers to silence anyone who speaks out.

The trouble with this strategy is that it involves ever more injustice, and people become upset. Witness K and Collaery have become heroes to an important segment of the Australian population, and even more so in East Timor. The Australian government, in its vendetta against those who expose its crimes, is trashing its international reputation.

The counter to government secrecy is ever more publicity. Thank you, Witness K and Bernard Collaery.

Brian Martin is editor of *The Whistle.*

Witness K is Dili's hero

Cynthia Kardell

ON THE 18TH OF JUNE, former Australian Security Intelligence Service (ASIS) officer Witness K was handed a three-month suspended sentence with a twelve-month good behaviour bond, for conspiring to tell Timor-Leste that Australia had bugged its cabinet room in Dili in 2004, during commercial negotiations over oil and gas reserves in the Timor Sea. It's hard to gauge, but in agreeing to plead in this way after months if not years of negotiation, I get the sense that Witness K is content with what he has done to right a terrible wrong.

The magistrate Glenn Theakston described his offence as "not trivial." It's an amazing understatement, rich in meaning in the way only the legal profession can deliver. I see it as both a nod to those who would roundly denounce it for the utter disgrace it is and a parting shot over the bow for those inside the court and out who think they might break ranks on a racket that only serves to keep other's dirty secrets.

Glenn Theakston

The ACT's Supreme Court was packed, with Witness K carefully hidden behind black panels. Spectators were allowed in at the final hour, to play their part in giving the proceedings the legitimacy they do not deserve. Witness K has had to endure nearly three years of bone-chilling negotiations under

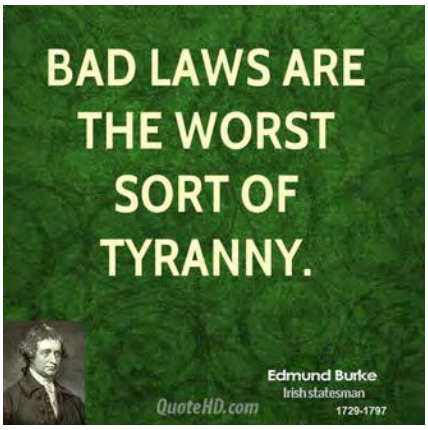
heavy security, with guards at the door and duct tape strapped over CCTV cameras, in search of a politically palatable plea deal that would allow the truth to remain behind closed doors in the name of national security. Like those criminal proceedings unfolding in China around charges levelled against Australian writer and dissident Yang Hengjun, who is accused of being a spy. Or those now engulfing Professor Sean Turnell, adviser to Myanmar's former leader Aung San Suu Kyi, who is accused of revealing official secrets. Like K. It is sobering, even terrifying, to know just how wafer thin the veneer of democracy can be.

Yang Hengjun

Sean Turnell

You and I are supposed to turn the page on Witness K by accepting the lie and despite the nagging feeling that we are being done over, knowing the government will get away with criminally ripping off an impoverished neighbour if we take this decision lying down.

Witness K must have initially thought he had to take it lying down. He had no other option available under the Public Interest Disclosures Act (Cth) 2013 (PID Act). He could object internally to the Inspector-General of Intelligence and Security (IGIS) (as he did) about bugging the Dili cabinet room during a renovation disguised as foreign aid and be bundled out of his job in secret (as he was) with the assistance of an ASIS-approved lawyer, former ACT Attorney-General Bernard Collaery. But K was doomed from the outset because his job description apparently includes doing criminal acts in the national interest. I understand why others in government and the intelligence and security community more generally would take issue with that description, but our security and intelligence laws have been deliberately crafted to render any act legal, even though it is for all other purposes illegal, if it is authorised in the national interest. This is bad law.



It creates a parallel universe where what you do is what you can get away with in secret. And secrecy has been assured, enabling ASIS operatives to behave as if matching it with the bad guys is heroic stuff and the real deal, even in peace where any treachery is not enough and even though we distinguish criminal acts from those done in the heat of war under international treaties and domestic rules of war.

The government would have us believe that in these circumstances it answers to the international community, not to you and me. But at the same time, it makes sure it doesn't have to answer to the international community by making itself — in the person of the IGIS — the final arbiter, in secret. Any person crossing that no-man's land into the international sphere is automatically marked out by legislation as criminal. It is in that no man's land where democracy slides easily into authoritarian rule. Which is perhaps why, when Witness K says he made an internal disclosure to the IGIS, it says publicly it has no record of it. In one leap that would do Franz Kafka proud, Witness K became a criminal who couldn't be believed and so couldn't be heard in public. Ever.

I have read that K thought that he shouldn't lose his job, presumably because he did the job he was directed to do whether or not he called it out for what it was as, presumably, no one else was losing their job. But by then he must have realised he was just one of the loose ends and his complaint about the "bugging," and probably so much more, was going nowhere. Fast. This is every whistleblower's worst nightmare. I am inclined to think that when K realized the government had had the game sewn up from the outset, he knew (as you do) that he'd have to escalate his claim to a whole new level.

In 2012 when the Gillard government refused to re-negotiate the maritime boundary, Timor-Leste filed a claim in the International Court of Justice (ICJ), seeking orders to stop Australia spying and to have the existing treaty set aside, as well as laying the groundwork for a new maritime boundary to be determined by the Permanent Court of Arbitration in The Hague under the United Nations Convention on the Law of the Sea. Their claim relied on Witness K's evidence. In 2014 as academic interest and media speculation grew, the Abbott government authorised the Australian Federal Police to raid K's home and that of his lawyer, seizing their passports and highly confidential documents. Timor-Leste upped the ante by applying to have the ICJ order their return. In 2017, under siege from abroad and at home, Australia decided to take the least damaging option by setting aside that "bad faith negotiation" and agreeing to negotiate a new maritime boundary between the two countries, in return for Timor-Leste dropping its claim in the ICJ.

The Australian government defended the treaty, the one that advantaged it so much, in the ICJ as long as it could.

In the following year, the two countries agreed a new maritime boundary, slap down the middle of the Timor Sea where it should always have been and the Attorney-General, Christian Porter signed off on the criminal prosecution of both Witness K and his lawyer, Bernard Collaery.

At the time I heard the (then) Foreign Minister Julie Bishop on ABC radio bragging how they had been willing to settle a dispute with Timor-Leste in line with the international "rules-based" system, before sticking the boot into China for not doing the same thing in the South China Sea.

Julie Bishop

It was breathtaking and deeply misleading. The minister didn't miss a beat. I guess you could call it willing, in one sense. I call it being dragged kicking and screaming, when you know the game is up. But it is a pity they didn't have the good grace to leave well enough alone when it came to Witness K and Bernard Collaery. I call that punishment for forcing them into the "rules-based" system after all.

If Witness K had been able to run a "public interest" defence under the PID Act in an open court, he would have been able to explain in compelling detail why (as the magistrate put it) his "express, deliberate breach of (his) obligations to maintain the secrecy of the operations of ASIS" was crucial to right a terrible wrong, when his country failed to negotiate in good faith. Theakston J found his actions were motivated by a sense of justice, not personal benefit. I say he put our best interests as a people ahead of the government's political interests and said, enough, this is wrong. So let any future Witness Ks say in an open court why what they were ordered to do was wrong and why the government's "bad-faith" prosecution should be set aside. Let this be his legacy.

We should not accept that tired old claim that if we knew what they (the government) knew, we'd know as they do that it has to remain a secret and we'd know that they were really looking after our best interests. Instead, we should make it possible for a future Witness K to trigger a high-level independent public inquiry (through the Parliament) into whether the government's decision is in our national interest domestically and internationally, to avoid endangering our national security as a responsible player in the global "rules-based" system. Something like this would have been very useful when the (now) independent MP Andrew Wilkie broke the news, just before the 2003 invasion of Iraq, that there were no weapons of mass destruction there, which the government wrongly used to justify joining the invasion, with some appalling consequences even today. This opportunity could tie into existing provisions under the PID Act that allow a whistleblower to disclose an imminent public danger to a member of Parliament and or the media if need be. Never again should cabinet take us to war.

If you need convincing, think about how much better it would be if a government couldn't get away with saying one thing behind closed doors to a court and the opposite to us in public.

Here is just one example of deceit writ large. In a television interview last year John Howard tearfully reflected on the "liberation" of East Timor in 1999 and later, his deployment of our troops as peacekeepers as a part of the United Nations Mission of Support in East Timor (UNMISET) in 2002, which he said was one of his "proudest achievements."

John Howard meets Australian troops leading the UN peacekeeping mission in Timor-Leste on 1 September 1999
Photo: Paula Bronstein/Getty Images

I was aghast. More like a guilty case of borrowed glory I thought. Borrowed from those who wrote, yelled, agitated and marched on the streets over years when it mattered, late last century, I think he may have come to believe it in the telling and so much so that it has become his reality at some level. Or it is his way of rewriting history.

You see that isn't what happened, in the street or anywhere else. Because in secret, the Howard government strongly resisted US attempts to get us to contribute to UNMISET, while in public he and Foreign Minister Alexander Downer steadfastly downplayed Indonesian atrocities, as the government wanted East Timor to remain a part of Indonesia. We know this from US security documents released late 2019. They had a deal in the making with Indonesia, enabling them to eventually, exploit East Timor's oil and gas reserves. So when John Howard waved UNMISET off, he was cynically doing the American government's bidding. In secret he didn't deviate for a second, ultimately making arrangements with the Foreign Minister Alexander Downer, Attorney General George Brandis and ASIS head David Irvine to renovate Dili's Cabinet offices — as a gift — to allow "us" to install the bugging devices with a view to swindling the East Timorese people. We know that because Witness K got the job of doing it. He told the East Timorese government about it, as any decent law-abiding citizen who loved the best of his country would. He can rightly be proud.

Had Witness K been able to speak out safely when he needed to, so much of what is a national shame could have been avoided. Intelligence and security laws must change so that secrecy serves us, the people, not government. And those "bad-faith" prosecutions against K and his lawyer should be set aside in the national interest, whether domestically by way of application in the High Court of Australia or in an international jurisdiction like the ICJ.

There's work to be done while Witness K remains a hero only in Dili.

Cynthia Kardell is president of Whistleblowers Australia.

Media watch

Alliance Against Political Prosecutions (AAPP)

https://aapp.ipan.org.au

AAPP is a coalition of groups and individuals advocating for truth and open justice in the matters of Bernard Collaery and Witness K and whistleblowers David McBride and Richard Boyle.

AAPP condemns politically motivated prosecutions, demands the discontinuance of the cases against such people, and calls for the provision of appropriate financial restitution.

AAPP supports whistleblowers and others whose actions result in serious wrong-doing being brought to public notice.

AAPP opposes the use of secret hearings in such trials — transparency and open justice should remain a high priority in our justice system.

AAPP supports Julian Assange in his fight against extradition to the US and calls on the Australian government to provide every support to him to bring him home to Australia.

AAPP supports calls for Royal Commissions to investigate:

1. the treatment and also protection of those who have disclosed or do conscientiously disclose, or report on, government or corporate wrongdoing in the public interest.
2. the formulation, definition, and the positive/negative effects or impact and the oversight of the national security legislation and practices that have emerged over the last two decades.

Stalinist-style prosecutions of Witness K and Bernard Collaery

Ian Cunliffe

Pearls and Irritations, 7 June 2021

FOLLOWING THE BERNARD COLLAERY and Witness K matters, occasionally there are little glimpses into the strange Stalinist world within which the Commonwealth beavers away to discredit two distinguished Australians. The Senate Estimates hearing on 29 May provided such an opportunity.

Mr Scott Bruckard, a public servant of 35 years, who is apparently the acting head of the office of the Commonwealth Department of Public Prosecutions (CDPP), showed that he is a dab hand at not answering questions. Yet still, some very interesting information did escape under questioning by Labor veteran, Senator Kim Carr, and independent Senator Rex Patrick.

Bernard Collaery

While evasive on the question, it seemed from Mr Bruckard's non-answers that the CDPP has not considered the impact of prosecuting Collaery and K on Australia's relations with Timor-Leste. Senator Patrick told the hearing that he had visited Timor-Leste a number of times and that Collaery and K are regarded as heroes there. Senator Patrick also remarked on the very prominent public works that the Chinese Government is constructing in Timor-Leste.

Astute observers have remarked that Timor-Leste is potentially Australia's Cuba. From a strategic military and intelligence perspective, there is little doubt that China would be very keen to have a presence in Timor-Leste. If it were to do so, the Australian Government would very likely need to respond. Senator Patrick remarked that the response would likely cost billions of dollars.

He did not say so, but that scenario would put Australia in a much worse position than having a friendly Timor-Leste on our doorstep.

The CDPP proclaims that in taking decisions whether or not to prosecute, one of the two factors it considers is the public interest — the other is whether there is sufficient evidence of guilt. Mr Bruckard told the hearing the public interest test is a continuing one — the CDPP applies that test not only before deciding whether to prosecute and keeps it under review.

It beggars belief that prosecuting Collaery and K can be in the public interest if for no other reason than its impact on Australia's relations with Timor-Leste.

In an article on *Pearls and Irritations* on 23 October last year, I analysed the CDPP's policy on when to prosecute in relation to the cases of Collaery and K and journalist Dan Oakes. The Commonwealth had just decided to abandon its prosecution of Mr Oakes for bringing to the Australian public's attention that our Special Forces military had murdered numerous people in Afghanistan.

I sent that article to the CDPP, Ms Sarah McNaughton, calling for the prosecutions of Collaery and K to be similarly abandoned. I received no reply nor even an acknowledgment.

The CDPP's website includes the "Prosecution Policy of the Commonwealth" (the Prosecution Policy) which it says "underpins all of the decisions made by the CDPP throughout the prosecution process." The Policy says that the pivotal test is whether "the public interest requires a prosecution to be pursued."

The Policy also speaks of the importance of not undermining the confidence of the community in the criminal justice system. No prosecutions in the more than half-century since I graduated from law school have had such a damaging effect on confidence in the criminal justice system [more] than Collaery and K.

Numerous other factors which the Policy lists as relevant are heavily in

favour of dropping these prosecutions. These include:

- the alleged offender's antecedents and background;
- the passage of time since the alleged offence;
- whether the prosecution would be perceived as counter-productive, for example, by bringing the law into disrepute;
- whether the alleged offence is of considerable public concern;
- the likely length and expense of a trial; and
- the necessity to maintain public confidence in the rule of law and the administration of justice through the institutions of democratic governance including the Parliament and the courts.

Crikey has described Collaery's prosecution as a vexatious pursuit of Collaery by then Attorney-General Christian Porter, reporting "bizarre secrecy orders [sought by the Commonwealth] that would see Collaery prosecuted, with the risk of jail, using documents that neither he nor his legal team, nor the jury, would even be allowed to see."

In order to prosecute K and Collaery, the prosecution is resorting to approaches that, in the view of many credible and even conservative observers, involve serious attacks on the Rule of Law and on the deeply entrenched Australian tradition of fairness in the conduct of criminal trials. These approaches seriously [bring] the reputation of the CDPP into disrepute, and seriously risk also bringing the courts in which the prosecutions are being conducted into disrepute.

These matters collectively have a real potential to very seriously and adversely affect community harmony and public confidence in the administration of justice, and to bring the law into disrepute, particularly in a prosecution that is seen by many to be politically motivated. Because of the secrecy of the trials, we know virtually nothing of the obstacles being put in K's path. We get limited glimpses of what is happening in Collaery's proceedings. Those glimpses include that the charges against Collaery don't identify — even to Collaery himself — what secret he is alleged to have disclosed.

It seems that we have nearly reached the point when the immense pressure over years on K has broken his will to fight on. He is apparently about to tap the mat. Collaery meanwhile, with his much superior knowledge of the law, is fighting on. To the extent that it is possible with these Stalinist prosecutions, I have considered whether a halfway fair prosecution of Collaery could possibly succeed. I am firmly of the view that it could not.

K might be well-advised to seek a stay to his prosecution until the Siamese-twin prosecution of Collaery is completed. If, as I predict, Collaery is acquitted, that should flow through to K as well.

Ian Cunliffe is a lawyer and formerly a senior federal public servant

Whistleblowers could be in more trouble than those they expose

Study warns that flawed laws mean those who expose organisational corruption in the media may be the ones to face criminal charges.

Mike Simpson
Australian Times, 2 May 2021

AUSTRALIAN EMPLOYEES and journalists who expose organisational corruption are in danger of criminal charges under severe and complex national security laws, according to University of Queensland academics.

UQ Law School's Dr Rebecca Ananian-Welsh and journalism academic Professor Peter Greste said the new laws would have made criminals of many whistleblowers who took their stories to the media in the past.

"Aside from Covid-19, the key stories from recent times have been about misconduct and abuse of power — by governments, banks, the Australian Defence Force, even parliamentary staffers," Ananian-Welsh said.

Exposing misconduct depends on whistleblowers

"All of those stories depended on whistleblowers; on people who've seen things go wrong inside government and businesses and then went to the press as a whistle of last resort," she said.

"Whistleblowers are absolutely crucial in addressing misconduct and maintaining accountability and integrity, but they need protection from reprisal. This includes the ability to remain anonymous."

The pair has called for change while launching their research on whistleblowing legislation as it affects journalism. The latest research, published on Friday, is the third paper in their "Press Freedom Policy Papers" series.

Their study found the extensive laws created confusion for journalists and whistleblowers about whether or not they were entitled to the all-important protections provided by whistleblower laws.

Public interest law should be urgently amended

Ananian-Welsh's "Whistleblowing to the Media" policy paper recommends the Public Interest Disclosure Act 2013 be urgently amended to better protect press freedom and those who blow the whistle on misconduct in government.

"The law should recognise that whistleblowing to journalists is a legitimate form of protected disclosure," she said.

"Sometimes democracy requires public disclosure of government mis-

conduct because solving the problem internally may not be good enough.

"The other urgent reforms are around whistleblower protections, in particular in the intelligence sector, which has been demonstrated in the controversial case of Witness K and Bernard Collaery."

The laws have become tighter in recent years

Greste said whistleblowers and journalists were always vulnerable under the law, but the laws themselves had become tighter in recent years.

"There's a general trend now for journalists to err on the side of caution when it comes to whistleblowers — it's too risky and potentially too expensive even though there is clear public interest in the story," he said.

"One of the key pillars of our democratic system has been a free, independent and sometimes rabid press.

"If, in trying to make us safe and protect our national security, we end up undermining that very pillar that has helped make us so safe in the first place, then national security isn't served."

Australia accused of "excessive and unnecessary" secrecy

Rod McGuirk
Associated Press, 20 June 2021

AUSTRALIA'S SUPPRESSION of information seen as pivotal to a free and open media is at the center of accusations that the country has become one of the world's most secretive democracies.

Last week, a former Australian spy was convicted over his unconfirmed role as a whistleblower who revealed an espionage operation against the government of East Timor.

It's the latest high-profile case in a national system in which secrecy laws, some dating back to the colonial era, are routinely used to suppress information. Police have also threatened to charge journalists who exposed war crime allegations against Australian special forces in Afghanistan, or bureaucrats' plan to allow an intelligence agency to spy on Australian citizens.

Australians don't even know the name of the former spy convicted Friday. The Canberra court registry listed him as "Witness K." His lawyer referred to him more respectfully as "Mr. K" in court.

Dierk von Behrens protests outside Parliament House in Canberra, Thursday 17 June 2021, against the prosecution of lawyer Bernard Collaery, pictured on his shirt

K spent the two-day hearing in a box constructed from black screens to hide his identity. The public and media were sent out of the courtroom when classified evidence was discussed, which was about half the time.

The only sign that anyone was actually inside the box was when a voice said "guilty" after K was asked how he pleaded.

The Australian government has refused to comment on allegations that K led an Australian Secret Intelligence Service operation that bugged government offices in the East Timorese capital in 2004, during negotiations on the sharing of oil and gas revenue from the seabed that separates the two countries.

The government cancelled K's passport before he was to testify at the Permanent Court of Arbitration in The Hague in 2014 in support of the East Timorese, who argued the treaty was invalid because Australia failed to negotiate in good faith by engaging in espionage.

There was no evidence heard in open court of a bugging operation, which media reported was conducted under the guise of a foreign aid program.

K was given a three-month suspended sentence. If he'd been sent to prison, there were court orders designed to conceal his former espionage career by restricting what he could tell friends and associates to explain his predicament.

He had faced up to two years in prison. Since his offence, Australia has continued to tighten controls on secrecy, increasing the maximum sentence to 10 years.

As lacking in transparency as K's prosecution was, it was a vast improvement on Australia's treatment of another rogue intelligence officer known as Witness J.

J has been described by the media as possibly the only person in Australian history to be tried, sentenced and imprisoned in secret. But no one seems to know for sure.

As with K, it is illegal to reveal J's identity.

J pleaded guilty in a closed courtroom in the same Canberra court complex in 2018 to charges related to mishandling classified information and potentially revealing the identities of Australian agents. He spent 15 months in prison.

The secret court hearing and imprisonment only became public in late 2019 because J took court action against the Australian Capital Territory government, claiming his human rights were violated by police who raided his prison cell in search of a memoir he was writing.

Demonstrators outside Parliament House in Canberra, 17 June 2021

Outraged lawyers then called for the first major review of the nation's secrecy laws since 2010. Whistleblowers as well as journalists currently are under threat from more than 70 counter-terrorism and security laws passed by Parliament since the 9/11 attacks in the U.S.

Andrew Wilkie, a former government intelligence analyst whistleblower who's now an independent federal lawmaker, is a vocal critic of national security being used as an excuse to pander to paranoia and shield embarrassment.

Wilkie opposed the prosecution of K and his former lawyer Bernard Collaery. Collaery is fighting a charge that he conspired with K to reveal

secrets to East Timor, and wants his trial to be open.

"I am in no doubt that one of the reasons for the secrecy around the K and Collaery matter is the enormous political embarrassment that we were spying on one of the poorest countries in the world to get an upper hand in a business negotiation," Wilkie said.

Wilkie quit his intelligence job in the Office of National Assessments days before Australian troops joined U.S. and British forces in the 2003 Iraq invasion. He publicly argued that Iraq didn't pose sufficient threat to warrant invasion and that there was no evidence linking Iraq's government to al-Qaida.

"I basically accused the government of lying," Wilkie said.

Although the government attempted to discredit him, Wilkie said he was never threatened with prosecution for revealing classified information.

A banner outside Parliament House, 17 June 2021, a day of protest against the prosecution of Bernard Collaery

For many, Australian authorities took a step too far in June 2019 in their bid to chase down whistleblowers, intimidate journalists and protect government secrets.

Police raided the home of News Corp journalist Annika Smethurst, and the next day the headquarters of the Australian Broadcasting Corporation. Both media outlets had used leaked government documents as the basis of public interest journalism.

The search warrants were issued under Section 70 of the Crimes Act 1914, which prohibited a government employee from sharing information without a supervisor's permission.

That section has since been replaced under national security legislation that expanded the crime to include a government employee sharing opinions or reporting conversations between others.

Media law experts Johan Lidberg and Denis Muller said Australia is the only country within the Five Eyes intelligence-sharing alliance — which includes the United States, Britain, Canada and New Zealand — that gives its security agencies the power to issue search warrants against journalists in the hunt for public interest whistleblowers in the name of national security.

Police decided in May last year that they had insufficient evidence to charge Smethurst, the journalist, over an article published in April 2018. She had reported that two government department bosses planned to create new espionage powers that would allow an intelligence agency to legally spy on Australian citizens.

Prosecutors also decided in October last year that the "public interest does not require a prosecution" of ABC reporter Dan Oakes over a television investigation broadcast in July 2017 that alleged Australian troops killed unarmed men and children in Afghanistan in potential war crimes.

But David McBride, a former Australian army lawyer who admits leaking classified documents to the ABC, is fighting multiple charges. He calculates he faces up to 50 years in prison for being a whistleblower.

There have been two parliamentary inquiries into press freedom since the police raids, but progress toward change has been criticized as slow and weak.

The Parliamentary Joint Committee on Intelligence and Security, which has rubber-stamped many of the problem security laws, said many submissions for change warned that "the balance in legislation and culture within the Australian government has tipped away from transparency and engagement to excessive and unnecessary secrecy."

A Senate committee inquiry into press freedom last month made several recommendations, mostly for more government investigation. The committee asked whether secret information offenses should be amended to include a harm requirement, and whether journalists should still have to prove that an unauthorized disclosure was in the public interest.

Wilkie, the lawmaker, argues Australia has drifted into becoming a "pre-police state" through its embrace of secrecy.

"It's now unremarkable when a government cloaks something in a national security need for secrecy," Wilkie said. "We don't bat an eyelid anymore. We should be outraged."

Defining moment: climate whistleblowing campaign off to a fast start

Mark Worth
Whistleblower Network News
30 April 2021

CLIMATE AND WHISTLEBLOWING are defining terms of the 21st century. Both words conjure strong emotions and reactions: anxiety, uncertainty, creativity and hope. They have united people all over the world, especially among younger generations, to take action for a better future with more sustainability, honesty and justice. They have taught us that anyone can make a difference — and perhaps that everyone should get involved.

A new campaign is uniting these terms to utilize one to save the other. "Climate Whistleblowing" is now being introduced to citizens, the media, and environmental and anti-corruption activists everywhere. Perhaps most importantly, the campaign is reaching public officials who have the power — and the responsibility — to protect both the climate and whistleblowers.

This week the campaign contacted more than 200 key parliament members in all 27 European Union countries who have direct supervision over environment and whistleblower policy. These are the elected officials overseeing the development of whistleblower laws that all EU countries must pass by the end of 2021 to comply with new EU regulations.

The two NGOs leading the campaign, the National Whistleblower Center (NWC) and Whistleblowing International, told parliamentarians:

"Many recent cases of climate whistleblowing clearly demonstrate that insiders are in the best position to know about and expose the full extent of wrongdoing. Employees have exposed many types of wrongdoing by fossil fuel and other companies, including tax evasion, bid-rigging, fraudulent accounting, falsified logging documents, and fraudulent technologies."

"However, most employees remain silent because of the real fear of being fired, harassed, threatened or even physically attacked. It is not acceptable for people to be harmed for trying to save our planet from harm. Ensuring that people will be protected by a strong whistleblower law is the first step to embolden them to expose illegal activities that threaten the very existence of our habitable world."

Many officials have responded with gratitude and support for the campaign. In one country, the Environment Ministry is now actively considering the campaign's main proposals. In another, a public official thanked the campaign for telling him he mistakenly thought climate already was included in the country's draft whistleblower law.

NWC Chair Stephen M. Kohn last month emphasized the critical role of citizens: "People have the most power to expose environmental crimes. But they need strong assurances they can report violations without losing their jobs and their careers. If any type of whistleblower needs and deserves first-class protections, it is the climate whistleblower."

To learn more about climate whistleblowing, including case studies and information on how you can get involved, visit NWC's Global Climate Whistleblower Center.

"I'm gutted and broken": Gupta whistleblower broke and can't find work

After speaking out against corruption at Gupta-linked Trillian Capital, Bianca Goodson struggles to find work and is at her wit's end

Thabo Baloyi

The South African, 6 June 2021

FORMER TRILLIAN CEO Bianca Goodson has been an instrumental part of efforts to unravel the extent of corruption, allegedly at the hands of the controversial Gupta family — having lifted the lid on the disgraced firm's dubious dealings with Eskom.

Goodson also implicated US consultancy firm McKinsey, which did work with Trillian and eventually made to pay back more than a billion rand to the power utility. Trillian was owned by Salim Essa, a powerful friend of the Gupta family. Goodson revealed how the company swindled money from Eskom and Transnet, to the tune of hundreds of millions of rands. She resigned from Trillian in April 2016, just months into the job.

She has been hailed for speaking out, but helping bust corruption has unfortunately failed to serve her well: not only has she struggled to find employment, she is struggling to get by — things have gotten so bad for Goodson, she has been forced to sell her home and will be moving in with her parents.

Bianca Goodson

"I am tired of these stages and I need a break! I have got to the point where I can not ask for any more money from my dad's pension, to support myself and my daughter. I feel that I am at the limit of compromising my relationship with my best friend because he too, has loaned me so much money," she said.

In addition to seeking employment, Bianca Goodson said she started her own company and looked at possibly earning money from public speaking engagements — but all this has been fruitless.

"I know that my skills haven't changed, but clearly, a consequence to me speaking out publicly has made these skills associated with this person, redundant and unwanted. I can't fake it anymore and my ability to hustle further has been exhausted," Goodson said.

> *"Today, with tears running down my face and no hope left, I realize that my decision to do the right thing and speak up against state capture has resulted in me moving 500km away so that I will no longer live with my daughter, selling the only place that gave me refuge and thus giving up my independence. I am gutted and broken"*

It's not all doom and gloom. South Africans and people from other parts of the world have opened up their hearts and wallets to help Goodson. As of Sunday, 09:30, nearly R60 000 has been raised for her.

Goodson played a key role in former public protector Thuli Madonsela's explosive State of Capture report, which recommended the establishment of the State Capture Commission, which is currently under way and has heard legions of corruptions allegations being levelled against the Guptas, former president Jacob Zuma and other role-players.

Q&A with Facebook whistleblower

Former employee Sophie Zhang speaks about what led her to post explosive memo last fall

Taipei Times, 18 May 2021

SOPHIE ZHANG worked as a Facebook data scientist for nearly three years before was she fired in the fall of last year. On her final day, she posted a 7,800-word memo to the company's internal forum — such farewell notes, if not the length, are a common practice for departing employees. In the memo, first published by Buzzfeed, she outlined evidence that governments in countries like Azerbaijan and Honduras were using fake accounts to influence

the public. Elsewhere, such as India and Ecuador, Zhang found coordinated activity intended to manipulate public opinion, although it wasn't clear who was behind it. Facebook, she said, didn't take her findings seriously. Zhang's experience led her to a stark conclusion: "I have blood on my hands."

Facebook has not disputed the facts of Zhang's story but has sought to diminish the importance of her findings.

"We fundamentally disagree with Ms. Zhang's characterization of our priorities and efforts to root out abuse on our platform," Facebook said in a statement. "As part of our crackdown against this kind of abuse, we have specialized teams focused on this work and have already taken down more than 150 networks of coordinated inauthentic behavior. Around half of them were domestic networks that operated in Latin America, the Middle East, North Africa, and in the Asia Pacific region."

Sophie Zhang

QUESTION: Why were you fired from Facebook?
ANSWER: I've made the news for much of the work I have done protecting elections. This might sound very important to the average person, but at Facebook I was a very low-level employee. In addition, this work was not my official job. I was conducting it entirely in my spare time, with the knowledge and acquiescence of leadership, of course. At first, the company was supportive of this. But gradually they lost patience with me. I was underperforming.

Q: In your memo, you wrote that you have blood on your hands. Why did you say that?
A: Whether something was acted on was, as far as I could tell, entirely a function of how much I yelled, how much I made noise.

I know that many of the decisions they have made have had impact in the countries that they worked on. The US is still deeply affected by what happened in 2016 with Russian manipulation on Facebook. For many countries like Honduras or Azerbaijan, this is their own Russia. But it's done not by a foreign power, but by their own government — and without even bothering to hide.

I tried my best to make decisions based on the information I had at the time. But of course I am just one person. Sometimes I waited on something longer than I should have. At this level of responsibility, your best is often not enough.

Q: How did you get into the work you did?
A: When I joined the company I was, like many people, deeply affected by Russia 2016. And I decided to start looking for overlap between inauthentic activity and political targets. And I started finding many results in many places, particularly what we call the global South, in Honduras, Brazil, India. Honduras got my attention because it had a very large amount (of inauthentic behavior) compared to the others. This was very unsophisticated activity we are talking about. Literal bots. And then I realized that this was essentially a troll farm being run quite openly by an employee of the president of Honduras. And that seemed extraordinarily awful.

Q: Then what did you do?
A: I talked about it internally. Essentially everyone agreed that it was bad. No one wants to be defending this sort of activity, but people couldn't agree on whose job it was to deal with it.

I was trying desperately to find anyone who cared. I talked with my manager and their manager. I talked to the threat intelligence team. I talked with many integrity teams. It took almost a year for anything to happen.

Q: You've said there is a priority list of countries. What happens to countries that aren't on that list?
A: It's not a hard and fast rule. Facebook does takedowns in small countries, too. But most of these takedowns are reactive, by which I mean they come from outside groups — tips from opposition groups, tips from NGOs, reporter investigations, reports from the CIA, etc. What happened in this case was that no one outside the company was complaining.

Q: Given the resources Facebook has, why it can't prioritize every country?
A: The answer that I've seen at Facebook when I was there, when these questions were asked, was that even though Facebook has a ton of money, human resources are different. Even if you have infinite money, you can't expand its size by a factor of 10 every night. It takes time to train people. It takes time to grow.

And it was willing to believe that for a while when I was there. But I think in retrospect, if they genuinely believed that it was important, they would be taking steps that they aren't. They would be focusing very highly on retaining talent in the integrity teams. And they would certainly never have fired me.

Q: How do people still at Facebook try to change this?
A: Like most employees, they're just average people who want to do the nine-to-six, want to go home at the end of the day and sleep.

There's also a self-selection bias. If you think that Facebook is evil, you aren't likely to join Facebook. But there are many people also who joined Facebook because they wanted to make it better. I was very upfront with them when I joined. I don't think Facebook is making the world a better place. And I told them I wanted to fix it.

Q: Is there a concern among employees about the company's image?
A: I think employees have gotten more pessimistic over time. But there's also a very strong insularity and perhaps paranoia toward the mainstream press.

People are skeptical of what the press says about the company.

I don't want to diminish that Facebook has been very open historically. We had regular access to the CEO. I was able to, as a very low level employee, be involved in our discussions with a company vice president. But it's also been changing over time because of fear and worry about employee leaks.

Q: Who is doing the work you did now?
A: I don't know. I was the only person who was going out on my own to look for this behavior rather than waiting for people to tell us that something was going on. The reason I found so many things so easily was because there was so much low-hanging fruit.

Q: Facebook says it's taking down many inauthentic accounts and has sought to dismiss your story.
A: So this is a very typical Facebook response, by which I mean that they are not actually answering the question. Suppose your spouse asks you, "Did you clean up the dishes yesterday?" And you respond by saying, "I always prioritize cleaning the dishes. I make sure to clean the dishes. I do not want there to be dirty dishes." It's an answer that may make sense, but it does not actually answer that question.

Graham Pink obituary

Nurse whistleblower who became a cause celebre when he was sacked for exposing understaffing on elderly care wards

Graham Pink's pursuit of "decent care" made him a standard bearer for properly resourced nursing.

Janet Snell
The Guardian, 6 May 2021

NOT SINCE FLORENCE NIGHTINGALE has a nurse speaking out caused such a stir. The case of Graham Pink, who has died aged 91, became part of NHS [UK National Health Service] folklore. He was nursing's most famous whistleblower, although for him the term was "inelegant" and he preferred "truth-teller."

His truth was the patient suffering he witnessed nightly in the late 1980s on the elderly care wards at Stepping Hill hospital in Stockport, Greater Manchester, where there were just not enough staff to cope with the desperately ill and dying patients. "Mr Pink," as he was universally known, came to public attention through a series of polite but passionate letters about the plight of his patients. He wrote to hospital managers, civil servants and politicians all the way up to the prime minister, Margaret Thatcher.

Extracts of the many letters, with his trademark signoff "Yours faithfully, FG Pink," were published in the Guardian in April 1990. They had been passed on by the local MP, Andrew Bennett, with Pink's reluctant agreement. The reader response in those pre-internet days was phenomenal, and Pink himself received more than 4,000 letters of support. But though he never named any patients, hospital management sacked him in 1991 for breaching patient confidentiality.

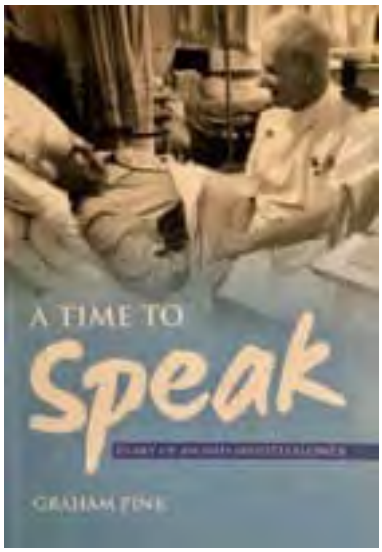
Initially he was not a member of a union, but he joined the Royal College of Nursing, which supported him at his disciplinary hearing. Then he fell out with his rep and quit the RCN. His determination sometimes bordered on stubbornness, he did not know the meaning of the word compromise, and while he was widely admired, the admiration was not universal. Many of his colleagues thanked him for taking a stand, but others felt his whistleblowing reflected badly on them.

Graham Pink gathering signatures for his campaign in Stockport in 1991

The case went to a tribunal, where, two weeks in, the health authority conceded the dismissal had been unfair, as Pink had not been given a warning. He was awarded the maximum compensation of £11,188, but did not get his job back. His career over, he had nonetheless become a nursing hero and an inspiration to a generation of student nurses. Courageous and principled, his pursuit of "decent care" made him a standard bearer for properly resourced nursing.

After his dismissal he travelled the country speaking to gatherings of nurses. He explained that he had made a case for three more nurses each night, but that would have set a precedent for elsewhere, and the issue of nurse staffing ratios remains a bone of contention to this day.

His campaign led to a World in Action television documentary and debates in the House of Commons, and helped to create momentum for the Public Interest Disclosure Act 1998, designed to protect whistleblowers. His book, *A Time to Speak: Diary of an NHS Whistleblower,* was published in 2013. He never received any apology for his treatment, and a "Pardon Mr Pink" campaign fell on deaf ears.



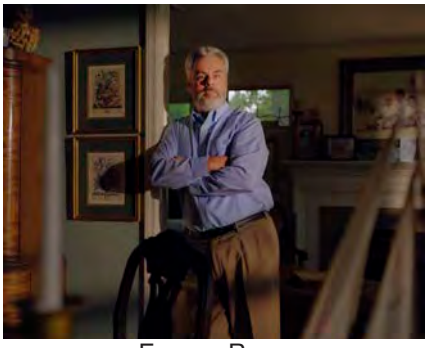
Graham Pink's book *A Time to Speak* was published in 2013

Francis Graham Pink, nurse and teacher, born 19 December 1929; died 6 March 2021

What it's really like to be a Wall Street whistleblower

SEC's Office of the Whistleblower has splashed out nearly a billion dollars in its cash-for-tips program. But it's not for the faint of heart.

Leah McGrath Goodman
Institutional Investor, 21 June 2021



Eugene Ross
(Photographs by Christopher Leaman)

THERE WAS the matter of the missing $175,000.

Eugene Ross did not feel at all confident about confronting a billion-dollar hedge fund with what he hoped was just a clerical error. At 45 years old, he was at the apex of his career. He started out on Wall Street in the late 1980s working in "the cage," an airtight vault in the bond department at Salomon Brothers, while going to night school. He set aside his aspirations of becoming a musician and entered into a broker-training program, eventually landing a job at Morgan Stanley, where he built a multimillion-dollar investment portfolio. He married, bought the wedding-cake house, and, with his wife, began rearing three young sons. When poached in 2002 by Bear Stearns, which let him write his own ticket, he could scarcely believe it. "They had a very good payout," Ross says. He joined up with his partner, bringing with them an asset base of $500 million. Bear wanted brokers who could produce, with big assets and clean compliance records. "At Bear, it was the Wild West," he says. But he avoided the hijinks and enjoyed complete autonomy.

Ross boasted a high-end clientele. It included Hollywood actress and *Fast Times at Ridgemont High* star Phoebe Cates and her husband, actor Kevin Kline, as well as Phoebe's Fabergé-egg-collecting mother, Lily Cates. Ross made no claims to financial wizardry, but he did well. He told his clients, "The best way to make money is to have fewer eggs, but watch them." In the summer of 2004, Lily Cates came to see him, concerned about some missing monthly statements from a bold-name San Francisco hedge fund in which she was invested, Amerindo Investment Advisors. At her request, Ross began to investigate and, to his dismay, discovered what appeared to be a trail of unauthorized transactions, including one that had posted just days earlier, pulling $175,000 from her account for mysterious reasons.

Unable to get answers from Amerindo, Ross and Cates hatched a plan. One sunny day in late September 2004, they met outside the hedge fund's gleaming Park Avenue offices to confront its New York-based founder, Alberto Vilar, to find out where the money had gone. Vilar, a personal friend of Cates for more than a decade, had agreed to let her bring him lunch. So far, Vilar, who made his name investing in emerging technology stocks, had been successful in dodging Ross's inquiries about Cates's missing statements. He did not realize Ross would be accompanying her. Riding the elevator to the 22nd floor of the steel-and-glass tower, Cates held a paper bag with an egg salad sandwich. Ross clutched a sheaf of paper, evidence of the latest irregularities in her account. Normally phlegmatic, he was not looking forward to the ambush. "I don't know if you've ever accused a billionaire of stealing money, but it's not your best day," he tells *Institutional Investor*. "Even then, I didn't think a billionaire would have any reason to steal $175K. I knew Alberto Vilar was full of s---. But I didn't know he was broke. Nobody did."

Alberto Vilar

The life of a Wall Street whistleblower is no witness protection program. The government doesn't finance the relocation of a whistleblower, or subsidize new housing or furnishings, or provide a salary. A Wall Street whistleblower faces the consequences, as well as the backlash, alone. For Ross, there was no notice his life was about to change permanently. He cannot recall a moment in the sequence of events that followed where he could have chosen to do the right thing and not also risk losing his job, home, and career prospects. That day in September, for him, was the last day of his former life.

"I never thought I could lose my job over this," he says. "I never thought that Bear Stearns would retaliate against me. I couldn't have imagined I would file for bankruptcy, or that the legal bills would force me to sell my house." Ross, whose sons are now grown, says they did not know what he went through until recently, although the family did watch the *American Greed* episode on the multimillion-dollar fraud he uncovered years later. "My kids were small at the time," he says. "My wife and I didn't want to tell them what was going on. You don't advertise that you declared bankruptcy."

Well into the 21st century, people like Ross were left completely exposed when they attempted to blow the whistle. That changed in 2010, when the Securities and Exchange Commission set up a new division bearing the Orwellian title of Office of the Whistleblower. Since the SEC granted its first whistleblower award in 2012, the program, set up under the Dodd-Frank Wall Street Reform and Consumer Protection Act, has meted out more than $937 million in awards to 178 individuals. Last year, the SEC presented the highest-ever whistleblower award of $114 million to a single whistleblower (who, like many, chose to remain anonymous). Whistleblowers can receive anywhere from 10 percent to 30 percent of the total collected by the SEC in an enforcement action, granted at its discretion, when they voluntarily turn over information leading to sanctions in excess of $1 million.

Jane Norberg, who commandeered the whistleblower program from its embryonic stages, spoke with *Institutional Investor* shortly before leaving her post as chief of the SEC's Office of

the Whistleblower in April, noting that the program was just beginning the second half of its fiscal year, but was "already breaking last year's records," with awards of "over a quarter of a billion dollars." In fiscal 2020, the SEC paid approximately $175 million in awards to 39 individuals.

The best tips, Norberg says, "are specific, timely, and credible — tips that point to specific people, specific transactions, and specific dates; things that are tangible that the staff can dig into." Of the whistleblowers who have received awards under the program, 71 percent provided original information allowing the SEC to open an investigation or examination into securities violations, while 29 percent provided original information that "significantly contributed to an already existing investigation or examination," according to the Office of the Whistleblower's latest annual report.

About 68 percent of those who end up receiving SEC whistleblower awards are company employees or insiders, such as corporate officers or directors, internal auditors and accountants, or members of the compliance department. That said, award recipients don't have to be insiders. Sometimes they are simply investors who have been victims of a fraud; professionals working in the same field or in a related industry; or "individuals who had a personal relationship with the wrongdoer, or individuals who have a special expertise in the market," the report said.

Stephen Kohn, whose Washington law firm, Kohn, Kohn & Colapinto, has represented whistleblowers like Ross since the 1980s, says the Dodd-Frank whistleblower program's masterstroke is that it finally puts the whistleblower first. The incentives, he says, are threefold: whistleblowers can file tips confidentially and anonymously; whistleblowers are protected by exceedingly strict anti-retaliation laws; and any tip filed with the SEC resulting in an enforcement action can be used by other agencies, such as the Department of Justice or the Internal Revenue Service, allowing whistleblowers to stack their awards. As a result, the average whistleblower award extends into the millions. None of these benefits or safeguards existed before Dodd-Frank, Kohn says. "The beauty of the SEC program is that it can open the whistleblower to eligibility of mandatory awards of 10 percent to 30 percent for every civil, administrative, or criminal action pursued by not just the SEC, but the United States," he explains. "Anything that relies on the same information brought forth by the whistleblower, such as a criminal antitrust violation — for which there is typically no whistleblower award — can create a multiplier effect."

That means, over time, whistleblowers can reap compounding returns as their information is deployed throughout the system by various government agencies undertaking related actions. When the $114 million whistleblower award was granted last October, approximately $52 million of it came from the SEC, while $62 million emanated from related actions by another agency, which the SEC did not name to ensure it did not give away the whistleblower's identity. "The SEC is super, super careful to keep all whistleblower identities secret," Kohn says. "I don't think it has ever messed up."

In the end, the record whistleblower award totaled more than double the SEC's prior top payout of $50 million in June 2020. "No other program is like this," Kohn says. One of his biggest clients — also anonymous — received an award of $177 million resulting from actions by the SEC, the IRS, and the DOJ. "The larger the sanction and sum collected, the larger the award," he says.

It is unclear whether Vilar ever got to eat his egg salad sandwich. But the meeting with Ross did not go well.

Feted as a billionaire genius and philanthropist, Cuban-born Vilar had the hedge fund and the art-drenched New York duplex. He even stunned onlookers by showing up for a performance at the Metropolitan Opera with Renée Fleming on his arm. Says one fellow hedge funder, Vilar may not have been courting the renowned opera singer, "but they certainly left everyone with that impression."

Renée Fleming

Vilar pledged an estimated $250 million in charitable donations to the Met and opera houses and art institutions around the world, claiming his gifts gave him the right to take a bow on stage — which he did.

But when Ross showed Vilar the paperwork revealing unauthorized transfers of Lily Cates's money, the big man grew quiet. "We're going to have to look into this," he said. Ross pointed to the signature from Amerindo approving the transaction, alongside Cates's own signature. Cates said she had never seen or signed the document. Vilar's partner, Gary Tanaka, also at the meeting, visibly blanched. He admitted that Amerindo's authorization on the document looked like a stamp of his own signature. "Well, you don't have a stamp of my signature, do you?" Cates asked.

"That's when things got really uncomfortable," Ross recalls. Neither Vilar nor Tanaka denied her signature was forged. "They didn't say it was a mistake. They didn't say, 'We'll give the money back,'" Ross notes. "That's when I knew they were lying."

Eugene Ross

Ross quickly left the hedge fund's office, but not before Vilar met him on the way to the elevator — and this time, Vilar threatened him. "I told him that I was going to have to tell Bear Stearns," Ross says. "It wasn't a small thing. He was a big client of ours and he was taking advantage of an elderly lady." Ross says Vilar informed him that when this was over, one of them wasn't going to have a job, and it wasn't going to be Vilar. "I asked Vilar, 'Did you do anything wrong?' He said no, so I said, 'Then you have nothing to worry about,'" Ross recalls.

Within eight months, both Vilar and Tanaka were arrested and charged with stealing tens of millions of dollars from their investors, approximately $5 million of which belonged to Cates. In November 2008, they were convicted on 12 counts of money laundering, wire fraud, securities fraud, and other financial crimes linked to Amerindo. Vilar spent a decade in prison and was released in 2018, saying he was punished for a crime in which no one lost anything — because investors were eventually repaid, with interest — and lamenting, "Look at the bull markets I missed; look at the operas I missed."

Ross was vindicated for his suspicions, but Vilar's prediction also came true: Ross lost his job at Bear Stearns in September 2005, exactly one year after discovering the fraud. The situation came to a head when Ross, still employed by Bear, began to voluntarily cooperate with the U.S. attorney's office for the Southern District of New York, the DOJ, and the SEC in criminal and civil actions against Vilar and Tanaka. He provided evidence, documents, and testimony at the criminal trial. Meanwhile, Bear cut his pay and took away his sales team. Ross was subjected to ongoing harassment and retaliation. As the Dodd-Frank rules had not yet come to pass, he worked with prosecutors as a key witness from 2005 to 2008 without the benefit of whistleblower anonymity or anti-retaliation protections. With his legal bills mounting, Ross sent a note to the U.S. attorney's office in August 2008, stating, "Please contact me directly with regard to the Vilar and Tanaka trial. I can no longer afford the expense of counsel. I will make myself available to you, as I have in the past."

In the criminal proceeding *United States v. Vilar et al*., Ross's detailed testimony of uncovering the fraud and forgery scheme against Cates helped win the case, with government prosecutors focusing on Ross's story of confronting Vilar and Tanaka over the theft in their opening statement. The case led to the collection of tens of millions of dollars by the SEC in its civil action against Amerindo, allowing it to make sure all the investors who lost money in the fraud were made whole. (Cates did not respond to calls for comment.)

Ross outlasted Vilar, Tanaka, Amerindo — and even Bear Stearns, which collapsed in 2008 amid the global financial crisis. But he lost his job, his home, and his life as he knew it. Today he resides with his wife in Point Pleasant, New Jersey, working as a call center manager overseeing employee benefits such as health care plans. His sons are now in their 20s. His middle son is an investment adviser. "You know what's sad?" Ross says. "You don't know you're a whistleblower. You only know you're a whistleblower when they retaliate against you. I thought I was telling them what they should know. But the bank didn't want to deal with it. This was too big."

In September 2014, Ross filed a whistleblower award claim with the SEC, which so far has collected an estimated $54 million in the civil action resulting from Ross's discovery of fraud at Amerindo. In 2018, the SEC denied his claim in a preliminary determination, stating that Ross did not voluntarily provide the original information leading to its successful enforcement action in *Securities and Exchange Commission v. Amerindo Investment Advisors Inc. et al*.

Ross's lawyers filed an appeal, arguing that it is undisputed Ross was the sole voluntary source of the original information that led to Vilar and Tanaka's convictions. "It is uncontested that Ross's original disclosure to Cates and subsequent cooperation with the DOJ and SEC triggered this sequence of events and provided the basis for the successful judgment of the SEC in this matter," they wrote. For more than two years, they have been waiting for the SEC's response. In the meantime, Vilar has emerged from prison, excited to attend operas again.

Kohn says the denial of Ross's whistleblower award appears to hinge on a narrow interpretation of the Dodd-Frank provisions that goes against the spirit of the law. "Ross blew the whistle to Cates before he talked to the SEC," says Kohn. "That should not be held against him. He blew the whistle to the victim first. He protected her from further fraud. That's exactly what you're supposed to do. The SEC has discretionary powers to grant whistleblower awards. They can still do the right thing by Gene."


Eugene Ross

Whistleblowers are as diverse as their stories, with an increasingly wide cross-section of people from the U.S. and around the world coming forward. "I would not say it's a cottage industry yet," says Edward Siedle, a former SEC lawyer with a background in asset management who has won $78 million in government whistleblower awards, including $48 million in 2017 from the SEC in a case against JPMorgan Chase & Co. "All of this is still in its infancy."

Siedle, in addition to investigating and filing his own claims, represents a handful of other whistleblowers through his law practice in Boca Raton, Florida. When whistleblowing works out, he says, "it is very remunerative." But with only an infinitesimal number of whistleblower tips leading to awards — less than 1 percent — scouring the landscape for the best cases can be the hardest part.

[Read the remainder of this article online.]

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WBA AGM

Due to Covid restrictions, this year's annual general meeting will be held online using Zoom at 9–11am, Sunday 21 November. For those usure about their Internet connections, there will be a test run in the week prior. Further details will be sent to the WBA email list and provided in the October issue of *The Whistle*.

Support Witness K and Bernard Collaery

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