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

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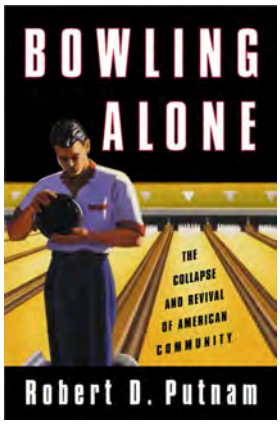
Does Whistleblowers Australia need rescuing?

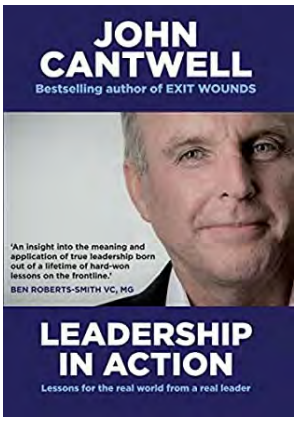
Jim Page

IT SEEMS as if I've spent a lifetime attending meetings. For instance, when most young men were busy chasing women, in my teenage years I was busy attending meetings, mostly of non-government organizations (NGOs) or what in UN-speak are known as civil society organizations. Out of what now seems to be a lifetime of experience, I'd like to make some suggestions for rescuing NGOs, some of which may or may not apply to Whistleblowers Australia.

Why rescue Whistleblowers Australia? After all, that's quite a dramatic expression. There are a number of possible reasons. Anecdotal evidence suggests that fewer people, especially young people, are now joining NGOs, fewer people are volunteering for management positions, and both administrative and normative fatigue is widespread. I should indicate that on a range of indicators Whistleblowers Australia is much healthier than most NGOs. It may nevertheless be useful to look at some specific general suggestions for NGOs, and then to think about these with regard to Whistleblowers Australia.



Before looking at suggestions for NGOs, it might be useful to mention two books. The conclusions of Robert Putnam in his 2000 book *Bowling Alone* are contested, although it is nevertheless a useful starting point as to why fewer people are joining NGOs. Putnam argues that there has been an overall decline in civic participation over the last half of the twentieth century — people are literally bowling alone, rather than in bowling leagues or clubs. Whether the internet has accelerated this disengagement, or whether the internet has in fact changed this, is open to debate.



John Cantwell's book *Leadership in Action,* published in 2015, is essentially a recollection of his experience as a military commander, although I found what he had to say about meetings instructive. He indicated that he deliberately aimed to have brief management meetings, although allowing for all to speak who wanted to speak. He also indicated that he sometimes insisted that participants stand at management meetings. His rationale was that if you don't let people get comfortable, then meetings are more likely to be to the point and productive.

Suggestion number one: lower expectations. Usually NGOs have an altruistic purpose, and this is surely a time in the history of humanity when genuine altruism is much needed. Any individual NGO, however, is only a small part of the wider civil society movement which will effect social change. All that we can do is to continue to speak truth to power, something which is surprisingly doable in the internet age. In other words, change is not all up to an individual NGO or indeed to any person.

Suggestion number two: have a small management committee for the NGO, as small as the rules or state legislation will allow.

The reason is simple: small is beautiful. It is rarely the case that the decision-making of a larger committee will be more effective than that of a smaller committee. Sometimes, the most effective committee for an NGO can be three — a chair or president, a secretary and a treasurer. And if the rules of an NGO don't allow for a small management committee, then amend the rules.

Suggestion number three: have fewer management meetings, and for those management committee meetings which are essential, cut down the length. People love to talk, and this is a healthy form of human behaviour, although decision-making meetings are not the best environment for this. Sitting through drawn-out meetings where little is achieved saps the morale of any organization. Be rigorous about meeting procedure, and delegate whenever possible.

Suggestion number four: improve digital presence, mainly through having an uncluttered website, but also, if the capability is there, through social media and a newsletter. Having an uncluttered website can be a challenge for NGOs,

given that those involved often tend to be very logocentric (wordy). In the age of the internet, having a good website can be an effective way of speaking truth to power, which in itself is valid goal for an NGO.

Suggestion number five: have more buy-in for members of the organization. One easy way to do this in the digital age is to allow members of an NGO to have a personal profile page linked to the NGO website. The advantage of this is that it encourages members to be more publicly identified with the NGO, provides additional publicity for the NGO itself, and in effect means that members are gaining something tangible (public exposure) for the membership dues.

Suggestion number six: do less. If an NGO has meetings, then have fewer meetings; if any NGO has a newsletter, then have this published less frequently. But get rid of the guilt about not doing more. This suggestion, of course, is linked with the suggestion regarding the importance of an online presence, that is, a good website. The reality of digital disruption is that we largely live our lives online. It is useful for NGOs to adapt to this reality.

We live in unusual times. There's some evidence of widespread despair as to how we can effect meaningful change in the way the world is heading — political scientists sometimes refer to this as the democratic deficit. Yet despite this, there are a number of indicators which point to the civil society sector, that is, NGOs, as the way we might effect meaningful change. The above are some general suggestions for NGOs, some of which may well be relevant to Whistleblowers Australia, but in any case I think are worthwhile considering.

Jim Page is an adjunct academic with the University of New England. He is a member of Whistleblowers Australia and lives in Queensland.

Controlling our thoughts and actions

Brian Martin

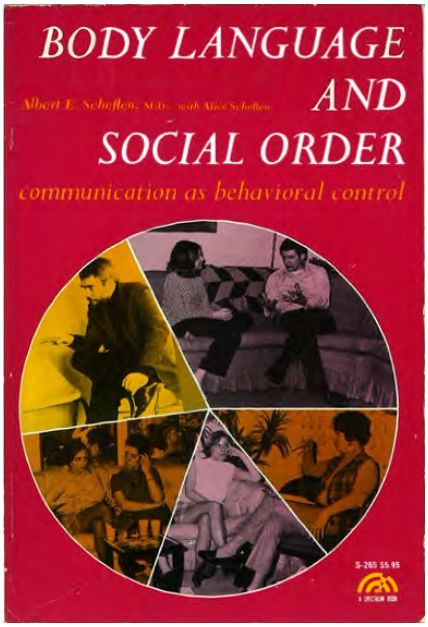
In 1972, a book was published titled *Body Language and Social Order: Communication as Behavioral Control.* I read it a year or two later and was so impressed that I wrote to the authors, saying I especially liked what they had written about social order.

Recently I was going through my old files of printed material and came across the notes I had taken on the book and my correspondence. I wondered what the book would say to me today, fifty years after it was published. So I ordered a copy and read it again. It was just as interesting as before, and I think there is still much to learn from it, including for whistleblowers.

Kinesics is the study of people's physical behaviour: postures, gestures, facial expressions and movements. Some motions are obvious, even striking, as when a child jumps up and down in excitement or anger. Other motions are subtle, such as when you enter someone's office and they indicate where to sit with a hand gesture, a glance or the positioning of their body. A posture or a shrug can communicate without the conscious awareness of either the sender or the receiver. These subtle motions and what they communicate are what interested the authors.

Albert Scheflen was a psychiatrist. I say "was" because he died long ago, in 1980. In the book, he is described as "Professor of Psychiatry at Albert Einstein College of Medicine and Researcher in Human Communication at the Bronx State Hospital and Jewish Family Service." He began researching kinesics in 1957. Among his colleagues were the prominent figures Gregory Bateson and Ray Birdwhistell.

The biographical blurb in the book about Alice Scheflen says she "has been a feature writer and editor in medicine and the sciences and Research Assistant in Human Communication." I couldn't find any other information about her.



The first part of the book describes various messages conveyed through body position, gesture and facial expression, and how they relate to spoken language.

An expression suggesting anxiety, in the US context. From the book, page 8

The authors begin by pointing out that humans share many behaviours with other primates. Chimps stake out territories and can counter intruders aggressively. Examples of human territoriality include fences around houses and boundaries between countries. These sorts of boundaries keep outsiders out and insiders in. When leaving or entering territories, there are bonding rituals, for example waving goodbye or going through immigration control. The Scheflens write that communication, normally thought of as spoken or written words, also includes behaviours that regulate the social order, including

the organisation of a group and its dominance and submission patterns. That includes rituals associated with territories.

As a couple steps back from an embrace, the woman grooms her husband by adjusting his collar, an example of bond-servicing.
From the book, page 20

Arriving at a social function, I see people standing around, mostly in groups of two, three or four. Spying someone I know in one of the groups, I approach. If a friend sees me approach, they might open a space for me to join the group, by a small movement. If others recognise the move, they will open a space for me, but sometimes they form a tighter circle, making it harder to join, an elementary example of the "cold shoulder," so familiar to those who are shunned. It can be an unconscious manoeuvre.

If two people do not want to be interrupted, they may stand closer or put arms up as a barrier.
From the book, page 29

At the gym, I approach a weight machine just as another exerciser does, coming from another direction. He looks at me and then looks at an adjacent piece of equipment, signalling that he will defer to me and use the other equipment. When I finish my repetitions, he is still at the other piece of equipment. I catch his attention and gesture towards the machine I just left. He smiles. Not a word is exchanged as we negotiate access and priority.

This woman may be saying "On the one hand" and will then open her left fist when saying "On the other."
From the book, page 43

The first part of the Scheflens' book is devoted to these sorts of kinesic messages, systematically explaining how people communicate through their bodies. Many different sorts of messages are described, illustrated with photos on nearly every page. The photos are literally snapshots of extended sequences of moves, so the Sheflens provide descriptions of the events displayed.

A kinesic signal of dominance.
From the book, page 52

One message they describe is the "monitor," designed to control someone else's behaviour. Observing two of his patients, Albert Scheflen observed a mother making a subtle move, sliding a finger across her lip, whenever her son said something she didn't like, and her son picked up the message immediately, although neither mother nor son consciously realised what was happening. Different sorts of gestures can serve as monitors, for example a frown or hunched shoulders.

In some situations, a body-language monitor can be more effective than explicit verbal instructions. A spoken command can trigger resistance in some people, whereas subtle gestures can work better because the message is subliminal. When children are acting up and then realise that others are looking at them in a certain way, this may be enough to get them to stop.

"A common monitoring signal is the act of wiping the index finger laterally across the nostrils. This kinesic act can be seen anywhere in America when some group member violates the local proprieties of that group."
From the book, page 108

The monitor is just one example of how kinesics can provide insight into social interactions. Many people, in their jobs and outside, experience disapproval, but it can be hard to point to what's going on because the message is partly or completely nonverbal, conveyed by gestures, postures and facial expressions. It's almost impossible to collect evidence about this. The same applies to ostracism. People seldom say, "I'm not going to socialise with you." Instead, they don't look you in the face, walk by without saying hello or providing a glance of recognition, and avoid sitting near you. These are kinesic and territorial behaviours. Most of these behaviours operate

outside of consciousness by either the sender or receiver of the kinesic messages.

Control over the way we think

One of the Scheflens' chapters is titled "The control of ideation," which means the control of thinking. They point out that kinesic-territorial behaviours learned at home and school, without formal instruction — a sort of indoctrination — prepare a child for the adult world, usually by acquiescing to dominant ways of thinking and behaving.

"An American child learns at an early age the fundamentals of his culture. He learns to speak and he learns the pointed myths of the culture in the form of fairy tales and the like. He learns to believe doctrines, and he also learns the rudiments of ethnocentrism. If he comes from a middle-class family or a family that aspires to the middle class, he will also learn about upward mobility and develop the motivation to learn and get ahead. He is now ready for schooling." (page 147)

The Scheflens say that an organisation member can become intellectually and emotionally bound up with the organisation's official belief system, so when hearing about alternatives or not conforming, ideas and feelings tied to the organisation are evoked. This is "institution-think," which means thinking and feeling from the perspective of the organisation. You can see how this would be a danger for someone who questions what is going on, who points to shady activities that contravene the official belief system. Those bound by institution-think will respond negatively, based on gut reactions and automatic thoughts.

In a society like Australia, most people are inculcated with a belief in individual autonomy, a belief that most behaviour is instigated by individuals making conscious choices to achieve their goals. If you think this is completely obvious, you've subscribed to what the Scheflens call the myth of individualism. An alternative perspective is that most behaviour is conditioned by the environment, which refers to everything external to the individual, including family expectations, job structures, roads, buildings and other people's behaviour. In this alternative perspective, which is common in collectivist societies, the focus is on the whole picture, on society, on social life as a dynamic process in which individuals are components that adapt to their environment.

How, in a place like Australia, do people maintain a belief in individualism? The Scheflens say the myth of individualism is maintained when those who conform to institutional rules make slight deviations that do not challenge the dominant ways of thinking. You can wear your own style of clothes to work but continue to accept and maintain the work hierarchy. You can adorn your room with personal pictures while continuing to be a conventional consumer. You can put your phone in a distinctive case and choose your own ring tone. The Scheflens note that people focus on individual choices and individual differences but do not notice wider-scale regularities and conformities.

Scapegoating

Every social arrangement — families, clubs, businesses and nations — has problems. What should be done about them? Why not blame someone?

Blaming is a convenient mechanism for exercising control, gaining power and eliminating those who might cause friction. The target of significant blaming rituals is called a scapegoat, someone or some group that is treated as responsible for problems, and attacked and/or expelled. The scapegoat serves as a magnet for others' psychological projections: all their own unrecognised bad elements are attributed to the scapegoat, magically cleansing the attackers.

Even the threat of being blamed can keep members subservient. Although the Scheflens never mention whistleblowers — the term was hardly known at the time — their analysis of scapegoating remains relevant today.

They say two structural factors lead to blaming. One is organisational problems, which are inevitable. The second factor is people believing in blaming and crediting, which is deep-seated in societies like the US and Australia. This can be seen in the deification of some public figures — think of Queen Elizabeth II — and the discrediting of others, such as disliked politicians.

In the process of scapegoating, the accused is often guilty of something, but no more so than others. This is a double standard, something familiar to whistleblowers.

When evaluating a worker's performance, what can be done to downgrade the scapegoat? It's not so hard. One method is to use a single attribute, for example sloppiness, tardiness, fondness for alcohol or attention to detail, to characterise the whole person. A highly creative and inspiring worker can be downgraded by being labelled sloppy, tardy, alcoholic or obsessive.

Another method used to downgrade a scapegoat is to apply local standards and ignore other values. In the organisation, it might be routine for corners to be cut, friends rewarded and monies siphoned. These are the local standards, and anyone who doesn't conform is cast loose. Meanwhile, other values, such as the merit principle and proper accounting, are disregarded.

When someone is undermined and abused, sometimes they lash out in frustration. This provides a pretext for scapegoating. This applies not just to whistleblowers but also to groups such as drug users and ethnic minorities. When any of them react to their demeaning treatment, they are blamed and repressed, while their life conditions are forgotten or absolved.

Defending whistleblowers from attack is necessary but comes with a downside. The focus remains on the whistleblower and on their treatment. Sometimes the focus is on corrupt operators. But seldom is attention directed at social arrangements, for example the market economy or hierarchy within organisations, that condition people's behaviour and lead to dysfunctions. Scapegoating is toxic, to be sure, but it may be better to understand it as a symptom of deeper problems, ones linked to the way families, workplaces, neighbourhoods and countries are structured.

Communication and deviancy

The Scheflens describe the process of "binding," which refers to close attachments, for example of a child to a parent or a patriot to a country. Binding often starts in the family and then continues through life, reinforced by culture, for example through the idea of romantic love.

Some people are bound to their employers; as already mentioned, they are subject to "institution-think." Managers do not address how the organisation fosters alienation among workers, but instead blame individuals. You can see how binding can lead to blaming those who don't conform. A family's "black sheep" member may be shunned or abused. In an organisation, they may be exploited or bullied. When they resist, they may be treated as insane.

Then there is the process called "double-binding." The Scheflens say there are three dimensions of double-binds: (1) contradictory demands on a person; (2) the paradoxical aspects are not recognised, for example one demand being verbal, the other being kinesic; (3) the person is in a social niche with no escape. A girl is told to be independent but whenever she takes initiative, a parent sends a non-verbal message to stop: this is a double-bind.

This same idea applies to workers who are expected to behave according to the high-minded ideals of the organisation but to live with contrary behaviours. The organisation might have an anti-bullying policy but bullying is rampant. Workers who cannot afford to leave are caught in a double-bind. If they lash out in desperation, they are blamed in the usual scapegoating ritual.

One of the Scheflens' final points is that in Western countries, it is assumed that individual behaviour causes wider social processes, for example that politicians and corporate executives are responsible for what happens, good or bad. The Scheflens prefer systems thinking, in which the drivers of behaviour are social structures, communication systems and ways of thinking.

In the half century since *Body Language and Social Order* was published, there have been many changes in society and interpersonal behaviour. With the rise of the gig economy, binding to organisations may be less common; perhaps binding occurs through economic insecurity. Social media have changed the way people interact. Still, the Scheflens' analysis offers many insights that remain relevant today. If anything, society is even more individualistic than before, and so is blaming people — the unemployed, criminals, corrupt operators or foreign enemies — while ignoring the role of social structures like the family, organisations and the system of nation-states.

After reading the book, in 1974 I wrote to the authors:

> I would like to let you know how much I enjoyed your book *Body Language and Social Order,* especially the part "Communication in institutional and political control." It seems to me to present an important radical perspective of the world in an easily understandable form, by appealing to an individual's personal experience of the world rather than to abstract philosophical arguments.

After telling about my own interest in the topics, I continued:

> It is obvious that educational institutions, like other institutions, communicate through their structures as a means for effectively obtaining and maintaining control over members. The authoritative space and time structure of the lecture situation, the design of syllabi by "experts," the creation of a scarcity of knowledge and the monopolisation of certification illustrate the divergence between "Do what I say" and "Do what I don't need to say." However, I am not familiar with any formal studies of educational institutions which investigate in detail the use of structure and paracommunicative behaviour in maintaining institutional control. I would appreciate any references you could give me along these lines.

In response, I received a letter from the Bronx State Hospital in New York:

> Many thanks for your comments on our book on Body Language and Social Order. Many people have commented on the early part of the book, but it is as though the last part on politics of communication was never written. It is simply ignored by students and reviewers as well. Some people have said I should never have written it. But I disagree. I would like to have written it better but it is high time we stop this nonsense that science is value free and speak out about the abuses of concepts and researches. So many thanks for making it worthwhile. I have no references to send you. The stuff you read is my own and my wife's. We did not do formal research on the matter and do not know anyone who has.
>
> Signed "Al Sheflen."

After my recent rereading of the book, I returned to my notes about it taken in the early 1970s. They were entirely on three of the fourteen chapters, the ones about control of mobility, control of ideation and control by scapegoating. How good to be reminded of these ideas again. If only the Scheflens were still around to discuss them.

Brian Martin is editor of *The Whistle*.

Dreyfus says no, it's different.

Cynthia Kardell

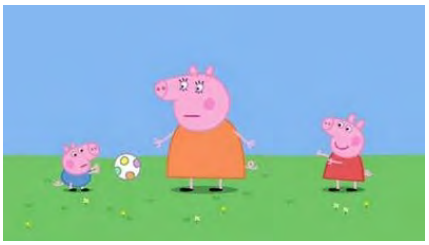
WHEN Attorney-General Mark Dreyfus decided to discontinue the criminal proceedings against former lawyer Bernard Collaery, he said his decision was "informed by the government's commitment to protecting Australia's national interest, including our national security and Australia's relationships with our close neighbours" (*Australian Financial Review*, 7 July). He explained his discretion to drop the prosecution was reserved for very "unusual" and "exceptional" circumstances like these.

Mark Dreyfus

I can see why that is, although it would've been nice for once for a government to publicly confront its criminal bugging of Timor-Leste government offices in the service of commercial advantage. But for the life of me, I can't see why the same considerations don't apply to the criminal prosecutions of former defence lawyer David McBride and tax official Richard Boyle.

The former Attorney-General Christian Porter actually ran the case against Collaery from his office and the decisions made at his discretion were clearly political and designed to keep their activities secret so as to frustrate Collaery's every move to get it out into the open. Dreyfus does acknowledge that Porter could've withdrawn his consent for the McBride and Boyle prosecutions at any time, but Porter didn't, and neither has he.

Dreyfus says it's different. The Commonwealth Director of Public Prosecutions (CDPP) took the decision to prosecute whistleblowers David McBride and Richard Boyle independently of the former government, and supposedly that was all there was to it. That may be true, but the CDPP didn't just take it upon itself to prosecute the two men. It was acting on instruction from the Australian Defence Force (ADF) and Australian Taxation Office (ATO) respectively. So, I'm assuming that neither was agreeable to discontinuing the proceedings, but each claimed the decision to file the proceedings was made independently of them. This presumably left Dreyfus like piggy in the middle, with a decision he didn't want to make. So, he's hedged his bets by leaving the CDPP to get on with it.



Dreyfus needs to explain why he thinks the national interest is best served by the two criminal prosecutions going ahead, particularly when, as Shadow Attorney-General, he had been so outspoken about the way the federal Public Interest Disclosure (PID) system plays out so badly in real life. In the absence of anything to the contrary, presumably he agrees the two criminal prosecutions are necessary, value for money and soundly based in law and good policy. Or worse, that they might just be the two test cases they need to justify the reforms he is considering making later in this term, based on the recommendations made by the Moss Review of the PID act in 2016. If so, he's got it all terribly wrong.

Dreyfus doesn't need a test case or two, because Justice John Griffith has already road-tested it in ACD13 v Stepanic in June 2019. (For more on this case, see "Chambers of secrets," page 10.) His Honour slammed Australia's PID system, describing it as overly "technical, obtuse and intractable," even though he found against ACD13 for failing to allow his employer an additional few days to do something or nothing, after a full 90 days of actively doing nothing. You get the sense he felt he had no alternative.

ACD13 tried to stop his employer, the Department of Parliamentary Services (DPS), from sacking him for disclosing confidential information. According to the court, the documents the security guard had mailed to an opposition senator were an "external" public interest disclosure. They contained a range of allegations against high-ranking staff at the DPS, including its handling of investigations and review processes. It also contained allegations relating to answers given in Senate estimates proceedings about a security incident and claims that a senior DPS officer had sought to cover up and avoid formal processes over a threat of physical violence made by a supervisor against a subordinate. ACD13 alleged multiple breaches of the parliamentary services code of conduct "including deception by providing and attempting to provide false, misleading and deliberately incomplete evidence to Senate estimates hearings and answers to questions on notice." It was in substance the same as the "internal" public interest disclosure or PID he had lodged 90 days earlier, adjusted to reflect the intervening period in which he'd followed up on its progress with the designated PID officer. He wanted to know whether the DPS would investigate or not. It was not as if it could have gone unnoticed.

Parliament Of Australia

Department of Parliamentary Services

His external disclosure was intercepted by DPS security officers on 9 October, opened, discussed, and passed on to ACD13's boss and the designated PID officer, the one who'd done nothing for just over 90 days. Two days later the designated PID officer referred ACD13's claims to Ian Temby QC for his investigation, which the court found was reasonable, once you realise you've missed the statutory deadline. In other words, under the PID act timing was everything for ACD13's protection from reprisal, but timing didn't seem to matter for the designated officer with

90 days or more to do something or nothing. By referring the internal PID to Temby QC, the DPS had effectively stymied ACD13's claim for protection, by removing his right to make an external disclosure until after the investigation had been completed, with the result that in effect it became a wrongful disclosure of confidential information.

In other words, if ACD13 had not updated his 90-day old "internal" PID at all, and waited a couple of weeks extra before hand-delivering it, the court case may have ended very differently with his protection still intact. But even with a win in hand, it seems the government solicitors had no real appetite for pressing on with their claim that he'd breached the code of conduct or the investigation, as they offered to cover ACD13's own legal costs and then some if he went quietly.

Not enough of the detail is known publicly, but if the McBride and Boyle civil claims play out anything like the ACD13 case did, what will it say about the PID system that hasn't already been said? ACD13 was denied protection after committing an offence that is not identified as an offence, although it can be construed as such and it obviously was treated as one. It's useful to think about what might have been had the DPS taken the PID Act's purpose to heart. It exists to encourage and facilitate PIDs, so why didn't the DPS either return his mail to him or allow it to be delivered, and encourage him to take part in the investigation it had belatedly put in place? I think the answer is there for all to see: the DPS wanted to silence and discredit ACD13

It won't come as any surprise to know that the Temby inquiry didn't proceed.

ACD13 faced an internal disciplinary process. It's a far cry from what former defence lawyer David McBride is facing. He has been charged with five criminal offences, including theft of Commonwealth property, unauthorised disclosure of information, and breaches of the *Defence Act.* The charges were laid in September 2018 after he leaked documents to the ABC in 2016 about the alleged war crimes committed by the Special Air Service Regiment (SAS) in Afghanistan. He had exhausted every opportunity within Defence, invoked the PID act and was steadfastly ignored by those in command. So, timing may well prove crucial in his civil claim for immunity from prosecution under the PID act. If he loses, the criminal trial will proceed next year.

David McBride

McBride supplied the information to ABC journalist Dan Oakes, which formed the basis of the 2016 series titled "The Afghan Files." It was classified information, sparking raids by the federal police, which drove mounting public pressure for an inquiry.

In 2018 the government responded by establishing the "Brereton" inquiry and simultaneously signalling its position by filing criminal proceedings against McBride. Two years later, when Brereton confirmed that war crimes were likely to have been committed, the government was ready with a plan. It established the Office of the Special Investigator (OSI) to investigate and prosecute those alleged to have committed war crimes between 2005 and 2016 in Afghanistan and, urged us not to expect an outcome given the time that had already elapsed. The government oozed sympathy, soothing what it saw as our upset as a nation, with a promise the OSI would be required to report to the government each year.

Brereton described the special forces' actions as "disgraceful and a profound betrayal" of the ADF. General Angus Campbell, the chief of the ADF, promised to act on the Brereton report's "shameful," "deeply disturbing" and "appalling" findings about the conduct of Australian special forces. The Afghan President later confirmed the Prime Minister had apologised to him for what he claimed were a few bad apples, as he worked to manage the fallout, which still threatens our national role and reputation within the region.

The chief of the Australian Defence Force, General Angus Campbell, after delivering the Brereton inquiry's findings in Canberra on 10 November 2020. *Mick Tsikas/AAP Image*

The issue has another international dimension. In 2017 the USA derailed the International Criminal Court (ICC) investigation into possible war crimes committed in Afghanistan by Afghani government officials, Taliban, US military, Central Intelligence Agency and US allies. It forced the ICC to drop its investigation into all US citizens and their allies, effectively closing down the evidentiary chain. The US is not a member of the ICC, but the stakes remain high for those who are, with some experts saying the failure to build a case that can be taken forward under current Australian law could persuade the ICC to reconsider whether it is better placed to handle the allegations.

Since 2016 others have felt encouraged to come forward anonymously. Four Corners went to air in 2020 with more video footage in its program "The Killing Fields." And only last month the ABC's "7.30 Report" aired more video footage, this time concerning soldiers from the country's other special forces unit, the 2nd Commando Regiment. It's fair to say the Brereton report probably doesn't represent the full extent of

likely abuses committed by our forces in Afghanistan or here, back at home.

David McBride has only grown in stature with each new revelation. He may not have known the whole of it, but he didn't get it wrong and it's increasingly obvious that the Morrison government always knew that. It's the only way to explain why Defence was given the green light to punish him in case his claims about senior ranking officials and others trying to cover it up gained some traction with those with a similar story to tell.

Then there's Richard Boyle. In October 2017 he made an extensive 27-page internal disclosure (PID) to the designated PID officer, claiming the Adelaide ATO's June 2017 directive, requiring standard garnishee notices to be issued post haste without proof of a debt having been established, contravened tax laws and the ATO's code of conduct. Two weeks later the ATO rejected his claim. Boyle redacted confidential information before sending it up the line to the Inspector General of Taxation (IGT). Along the way, the ATO withdrew the June 2017 directive. In January 2018, they offered him a settlement to go quietly on the proviso he signed off on a non-disclosure agreement. Boyle refused. He went to the media, which triggered a joint *Age–Sydney Morning Herald*–Four Corners investigation that went to air in a program entitled "Mongrel Bunch of Bastards." Just days prior, the AFP raided his home. He was subsequently charged with 66 offences under the Taxation Administration Act along with the misuse of a listening device. After a damning Senate inquiry report into the IGT was published, the CDPP dropped the charges against him from 66 to 24. In other words, it was then and still is a pile-on.

Like the DPS in the ACD13 case, the ATO was prepared to pay money to bury the issue. It only sued Boyle after not getting its way. It's punishment for opening them up to public embarrassment and ridicule, which by the way they deserve. It's shaping up to be a re-run of the Robo-debt scandal when the government knew it was breaking the law but wouldn't do anything to stop it. That is, until a court found it was an illegal scam designed to pull in the revenue no matter what. The Government agreed to repay at least 381,000 people $751m and wipe out all debts to settle the claim.

So, Dreyfus would be wise to reflect on how well his party did in opposition when it argued the former government always knew it was illegal to issue garnishee notices without proof of a debt having been established. Dreyfus might say it's different now they're in government, but history says principled consistency is everything.

Boyle, like McBride, has filed a civil suit under the PID Act. It is set to commence on 4 October, after the *Guardian* successfully challenged the CDPP's application to suppress the publication of court documents, which it claimed would "prejudice" the criminal case if it went ahead. The CDPP's claim isn't by any means novel, but the circumstances say more about what the ATO would hide if it could and how the CDPP is planning to run its case.


Richard Boyle

In his affidavit, Boyle records ATO staff taking a "callous" approach to small business owners who expressed suicidal thoughts while being chased for what they claimed were dodgy debts. He was blocked from helping one individual who said they were "losing the will to live," and in another instance was told by a senior employee they were "sick of taxpayers threatening suicide." Boyle says he began to observe serious flaws in the culture of the ATO in the lead-up to his decision to speak out about the harm caused by aggressively pursuing debts from individuals and small businesses without proof of there being a debt (*The Guardian,* 22 September 2022).

In an abstract sense, the government would agree with Boyle speaking up. The nation's taxpayers must be able to rely on the ATO acting fairly and legally in all things, particularly when it is called to account for its own actions. Like it is now. And whether you agree with it or not, the PID system reflects that position by giving the ATO the first opportunity to correct the error of its ways. It's called self-regulation more generally and is said to build on the best in us, but sometimes that is not what happens. Like now. Cast your mind back to the way the big four banks and financial institutions deliberately incentivised their staff to commit fraud, as a policy to maximise profits. That's what seems to be happening here, and it matters domestically and internationally. We can't risk our tax system being seen as a haven for spivs and thugs, which is why the government needs to get behind Boyle, not cut him off at the pass.

I know Dreyfus says it's different but, is it? If his commitment to protecting Australia's national interest is to be more than a platitude, he needs to explain his reasoning. I want to know how and why he came to his decision not to drop the two criminal prosecutions or settle the two civil claims. I want to know why he thinks it is a good thing to let the law take its course. Is the government secretly hoping to be able to sheet home any truly awful result to the current opposition, before rescuing the two men from their costs? If so, he's dreaming! The national interest only ever lies in openly making the right decision for the right reasons. Nothing less will do.

Chambers of secrets: how a Parliament House staff member fell afoul of Australia's outdated whistleblower laws

Sarah Basford Canales
Canberra Times, 17 September 2022

A SERIES of damning headlines had raised the pressure in Australia's halls of power.

Inside Parliament House in 2018, it was public servants, not politicians, who were feeling the heat.

The Department of Parliamentary Services had decided to find the source of leaks to senators and the press, after revelations about a string of controversies had made their way from the secretive confines of the building into Senate estimates hearings and national newspapers.

Department of Parliamentary Services secretary Rob Stefanic, left, and Attorney-General Mark Dreyfus, right. Pictures by Getty Images, Keegan Carroll and Sitthixay Ditthavong

They had exposed problems inside the department — embarrassing its officials and raising questions about its handling of major contracts and security alerts.

In one episode revealed through Senate estimates questioning, a senior security executive had tasted a suspicious "white powder" to determine it was not a hazardous threat. The incident raised questions about the judgment of its staff handling potential emergencies.

Senate estimates hearings had also revealed the agency lost a 1000-page document, which held confidential information about Parliament House's $126 million security upgrades.

National newspapers had joined the fray, revealing questions had been raised over the "lifestyle" choices of the contractor responsible for the delayed multi-million dollar upgrades that blew the department's initial budget for the project.

Somewhere, information was reaching senators and journalists. The department, and its secretary Rob Stefanic, moved to plug the leaks.

One whistleblower fell afoul of the DPS' clamp-down and lost his job when the department intercepted his attempted disclosure to a senator.

Many of the details of the saga remain under lock and key after a federal court judge ruled they be subject to a suppression order.

The incident has raised questions about protections for whistleblowers and prompted renewed calls from legal and human rights experts for an urgent overhaul of Australia's whistleblower laws — a task recognised by both Labor and Coalition figures as overdue.

The DPS ultimately sacked the whistleblower after mail he had attempted to send to a Labor senator staffer came into the possession of top officials.

On October 15, 2018, an envelope containing an attempted external public interest disclosure arrived at Parliament House.

It was sent by the whistleblower, a security officer called David*, later known as ACD-13 in the federal court, who had worked in Parliament House for two decades.

He had been in contact with a staffer in a senior Labor senator's office, who asked him to send it ahead of the coming week's estimates hearing.

It's alleged to have contained sensitive information that would provide additional information not on the public record, which could embarrass agency heads — and the government — about a series of high-profile blunders.

But the envelope containing the information never made it to the senator's office that Monday.

Instead, it was opened by someone and later examined that afternoon by senior officials who would comb through the documents wearing rubber gloves and later hand it to Mr Stefanic for safe-keeping in his office.

The two senior officials claimed they were trying to determine who the envelope was intended for and were not aware the sender was attempting to send an external disclosure.

Both were aware it was David's mobile number on the back of the envelope written under "sender" prior to inspecting its contents.

The incident made its way to federal court in 2019 when David alleged he had been punished for attempting to send his allegations to people outside the department.

The federal court case, which has been largely suppressed from public record to protect the security officer's identity, was ultimately dismissed as the evidence supplied couldn't determine a link between the attempted leaking and the alleged reprisal against him and his attempted disclosure did not meet the criteria for a valid external disclosure.

However, the judge conceded the laws were "technical, obtuse and intractable" for lawyers, let alone regular public servants hoping to come forward.

Department of Parliamentary Services secretary Rob Stefanic at Parliament House. Picture by Keegan Carroll

Former Senate president Scott Ryan admitted in an estimates hearing years later he had also seen the whistleblower's intercepted documents but had smoothed it over with the Labor senator's office they were intended for.

The documents appeared to never reach the senator's office. Meanwhile, David lost his job following a determination that his actions in attempting to disclose the information to the Senator constituted a breach of the applicable Code of Conduct.

Before sending the documents to the senator's office, David had attempted to follow the rules. He sent details and documents of what he perceived as misconduct in June 2018, following an

all-staff email by Mr Stefanic encouraging staff to come forward.

Under the laws, anyone who submits a public interest disclosure can send their claims outside the department 90 days after it is allocated, if an outcome isn't reached.

But an authorised officer wasn't officially allocated until October.

Internal emails show the formal probe into the claims was delayed for more than 100 days, despite DPS policy documents requiring them to start the process within a fortnight of receiving it.

The case has heaped further pressure on the new government to reform Australia's complex whistleblowing laws — acknowledged by both Labor and the Coalition as needing an overhaul.

Attorney-General Mark Dreyfus has indicated he wants to fix the nation's whistleblower laws, which he first introduced in 2013 when last in government, but legal experts want to see more done, including a new dedicated whistleblower protection agency.

An independent review in 2016 called for sweeping improvements, including simplifying the laws and processes for would-be disclosers, reducing the administrative load for agencies and providing those who come forward with more avenues for support.

Mr Dreyfus said it had been a "great disappointment" to see the law remain unchanged since its introduction, noting he was aware it was "not a perfect scheme".

Last year, then assistant attorney-general Amanda Stoker agreed major reforms were overdue.

Law Council president Tass Liveris said the proposed changes needed to empower whistleblowers to speak out without fear of reprisal if they witness wrongdoings in the workplace.

But he wants to see more than just the shortfalls of the *Public Interest Disclosure Act* rectified, and that means a whistleblower protection authority to help support those who try to shed light on perceived misconduct.

"There needs to be a more holistic review of the protection of disclosures of wrongdoing throughout government, the corporate sector and in court proceedings," he said.

Long-time whistleblowing advocate and senior lawyer at Human Rights Law Centre Kieran Pender said the Albanese government must make reforms a priority as it looks to establish an anti-corruption body by the year's end.

Kieran Pender

"Whistleblowing is an important aspect of democratic accountability, but whistleblower protections for federal public servants are no longer up to scratch," he said.

"For six years the former government sat on important changes to the *PID Act,* which would have ensured public servants are empowered when they speak up about wrongdoing."

Mr Stefanic and other officials were approached to respond to detailed questions but declined to offer comments, citing legal advice. Former senator Scott Ryan did not respond to requests for comment.

** David's real name has not been used to protect his anonymity.*

Sarah Basford Canales: I'm a federal politics and public sector reporter with an interest in national security, integrity and regulation.

Contact me with general tips at sarah.basfordcanales@canberratimes.com.au or confidential tips at sbasfordcanales@protonmail.com.

In defence of whistleblowers (and Donald Trump)

Gwynne Dyer
Stuff, 8 September 2022

I NEVER THOUGHT I'd be writing a column in defence of Donald Trump, but a journalist has to go where the evidence leads.

Over the years I have written columns in defence of Daniel Ellsberg, Mordechai Vanunu, Edward Snowden and Julian Assange, so how could I abandon Donald Trump in his time of need?

Admittedly, Trump is not your traditional whistleblower, driven by high motives and a need to speak truth to power.

He's more of a pack-rat, whose motives for stealing government documents may be obscure even to himself. (I use the word "stealing" because that's the word that was used for all the honourable men in whose footsteps he has followed.)

Maybe Trump was taking the documents — and clinging to them fiercely despite insistent demands for their return from the National Archives, the Justice Department and the FBI — with some vague notion that they might prove useful one day.

But for what? Blackmail? Selling them to the Russians? Writing his memoirs?

Take the star exhibit from the documents that were taken from Trump's Mar-a-Lago estate in the FBI raid on August 8, which reportedly contained information about "a foreign government's military defences, including its nuclear capabilities."

This image, contained in a court filing by the Department of Justice on 30 August 2022, and redacted in part by the FBI, shows documents seized during the 8 August FBI search of Trump's Mar-a-Lago estate

So what?

It probably won't contain any information about how that data was acquired, especially if it involved "humint" (spies). It's really just one of Trump's keepsakes, and it almost certainly wouldn't do any harm if it were published.

Trump is convinced that this investigation was started by Joe Biden, "his" Justice Department and "his" FBI. However, it's much more likely to be just enormous bureaucratic dinosaurs doing what they always have done.

The intelligence agencies always try to hide their activities, but most often

because their actions are incompetent, irrelevant or illegal.

It's the mystique that justifies their immense budgets, not their actual accomplishments. That's why they are so vindictive even when the secrets that have been revealed aren't really very important.

Indeed, when they devote huge resources to tracking down and punishing whistleblowers, it's because whatever they revealed is embarrassing for the agencies or the governments they serve.

Real spies who steal vital national secrets (there are such secrets, though far fewer than people think) get killed, jailed or exchanged without much public ado.

What Daniel Ellsberg revealed in 1971 was a 7,000-page top secret history of US involvement in the Vietnam War up to 1968 that he had helped to write himself. It contained no information about current operations, just a truckload of deeply embarrassing details about how the US government got involved in that stupid war and how badly it had waged it.

Releasing it was a public service, as most Americans eventually came to agree.

But not before Ellsberg was indicted under the Espionage Act and spent several years defending himself from charges that could have led to a 115-year prison sentence.

Mordechai Vanunu was an Israeli who revealed details of Israel's nuclear weapons programme in 1986, about two decades after the weapons were first built. Their existence was the most open of secrets — literally everybody who took an interest already knew about them — but he was kidnapped while he was abroad, tried and jailed for 18 years.

Vanunu's movements and contacts are still strictly controlled, and he cannot leave Israel. His most recent Twitter post (this month) reads "No freedom yet, continue to wait, nothing changed, no news here, one more month, and one more year, since 1986, but freedom must come."

Edward Snowden worked for the US National Security Agency, and revealed the vast extent of global surveillance programmes run by the NSA in 2013. Many thousands of individuals were targeted, up to and including the heads of several allied governments.

Snowden had the wit to leave the US before sharing his data with leading newspapers, but the US State Department revoked his passport and trapped him while he was in transit through Moscow. He is still stuck there today.

And of course there's Julian Assange, the founder of WikiLeaks, which profoundly embarrassed the CIA in 2010 by putting a huge trove of secret US records about the wars in Iraq and Afghanistan on the web. He has been trying to avoid extradition to the US ever since, almost all of that time in confinement of one sort or another.

Donald Trump is therefore in much better company than he deserves, and his motives for taking all those secret documents were unclear.

But the documents themselves, for all that they are marked "Top Secret — Burn Before Reading" or whatever, are probably no more harmful to real US national security than those published by his predecessors.

They finally got Al Capone for tax fraud, but they shouldn't get Donald Trump for this.

Gwynne Dyer is a UK-based Canadian journalist and seasoned commentator on international affairs.

Give whistleblowers compensation, not a US bounty system

Elizabeth Gardiner
Financial Times, 29 August 2022

COMPENSATING whistleblowers for the risk they face in reporting fraud is unarguable — and is why damages at employment tribunals for whistleblowing claims must remain uncapped, reflecting potentially lifelong career losses.

However, suggesting the UK follow the US system of "rewards" for whistleblowing ("HMRC urged to boost whistleblower payouts in evasion fight", Report, August 24) is based on a misconception.

Whistleblowers may receive eye-popping amounts in the US but the proportion of whistleblowers who receive anything is tiny. In 2021, the US Internal Revenue Service received over 14,000 claims but only 179 whistleblowers received payments.

US whistleblowers must expose frauds involving hundreds of thousands of dollars, and information must lead to successful collection of the proceeds of fraud. Rewards bear no relation to the damage done to the whistleblower and do nothing to compensate the many thousands raising valid concerns who don't meet the IRS criteria.

If HMRC wants to offer more generous financial rewards that's fine but encouraging people to speak up is not the key challenge. As HMRC point out, there is no shortage of whistleblowers coming forward — almost 14,000 reported to the agency in 2020–21. The real issue is listening to whistleblowers: too many are ignored or victimised when they raise a concern.

At Protect we directed to HMRC many callers during the pandemic, raising concerns about employers fraudulently claiming furlough payments; often the employers had no internal whistleblowing system to address concerns.


Liz Gardiner

Getting internal whistleblowing right can mean employers stop fraud before regulators need to be involved,

and the losses to the public can thus be minimised. In our experience, most whistleblowers simply want the wrongdoing to stop. Our 2021 research with YouGov found only 2 per cent of respondents said they would whistleblow for financial reward, while over 40 per cent would raise a concern, regardless of the risk to themselves.

Requiring all employers to have good whistleblowing arrangements and ensuring enforcement bodies are adequately resourced would be a far better way of dealing with fraud than the US bounty system.

Elizabeth Gardiner is Chief Executive, Protect, London E2, UK

Protect
Speak up, stop harm

When the just go to prison

Chris Hedges
SheerPost, 1 August 2022

Marion, Illinois — Daniel Hale, dressed in a khaki uniform, his hair cut short and sporting a long, neatly groomed brown beard, is seated behind a plexiglass screen, speaking into a telephone receiver at the federal prison in Marion, Illinois. I hold a receiver on the other side of the plexiglass and listen as he describes his journey from working for the National Security Agency and the Joint Special Operations Task Force at Bagram Air Base in Afghanistan to becoming federal prisoner 26069-07.

Daniel Hale

Hale, a 34-year-old former Air Force signals intelligence analyst, is serving a 45 month prison sentence, following his conviction under the Espionage Act for disclosing classified documents about the U.S. military's drone assassination program and its high civilian death toll. The documents are believed to be the source material for "The Drone Papers" published by *The Intercept*, on October 15, 2015.

These documents revealed that between January 2012 and February 2013, U.S. special operations drone airstrikes killed more than 200 people — of which only 35 were the intended targets. According to the documents, over one five-month period of the operation, nearly 90 percent of the people killed in airstrikes were not the intended targets. The civilian dead, usually innocent bystanders, were routinely classified as "enemies killed in action."

The terrorizing and widespread killing of thousands, perhaps tens of thousands, of civilians was a potent recruiting tool for the Taliban and Iraqi insurgents. The aerial attacks created far more hostile fighters than they eliminated and enraged many in the Muslim world.

Hale is composed, articulate and physically fit from his self-imposed regime of daily exercise. We discuss books he has recently read, including John Steinbeck's novel *East of Eden* and Nicholson Baker's *Baseless: My Search for Secrets in the Ruins of the Freedom of Information Act*, which explores whether the U.S. used biological weapons on China and Korea during World War II and the Korean War.

US federal prison in Marion, Illinois

Hale is currently housed in the Communications Management Unit (CMU), a special unit that severely restricts and heavily monitors communications, including our conversation, and visitations. The decision by The Bureau of Prisons to lock Hale up in the most restrictive wing of a supermax prison ignores the recommendation of the sentencing Judge Liam O'Grady, who suggested that he be placed in a low-security prison hospital facility in Butner, North Carolina, where he could get treatment for his PTSD.

Hale is one of a few dozen people of conscience who have sacrificed their careers and their freedom to inform the public about government crimes, fraud and lies. Rather than investigate the crimes that are exposed and hold those who carried them out to account, the two ruling parties wage war on all who speak out.

These men and women of conscience are the lifeblood of journalism. Reporters cannot document abuses of power without them. The silence on the part of the press over Hale's imprisonment, as well as the persecution and imprisonment of other champions of an open society, such as Julian Assange, is stunningly shortsighted. If our most important public servants, those with the courage to inform the public, continue to be criminalized at this rate, we will cement in place total censorship, resulting in a world where the abuses and crimes of the powerful are shrouded in darkness.

Barack Obama weaponized the Espionage Act to prosecute those who provided classified information to the press. The Obama White House, whose assault on civil liberties was worse than those of the Bush administration, used the 1917 Act, designed to prosecute spies, against eight people who leaked information to the media including Edward Snowden, Thomas Drake, Chelsea Manning, Jeffrey Sterling and John Kiriakou, who spent two-and-a-half years in prison for exposing the routine torture of suspects held in black sites.

Also under The Espionage Act, Joshua Schulte, a former CIA software engineer, was convicted on July 13, 2022, of the so-called Vault 7 leak, published by *WikiLeaks* in 2017, which revealed how the CIA hacked Apple and Android smartphones and turned internet-connected televisions into listening devices. He faces up to 80 years in prison. Assange — although he is a publisher and not a U.S. citizen, and *WikiLeaks* is not a U.S.-based publication — was indicted by the Trump administration under the Act.

Obama used the Espionage Act against those who provided information to the media more than all previous administrations combined. He set a terrifying legal precedent, equating informing the public with spying for a hostile power. I published classified material when I was a reporter at *The New York Times*. Prosecution for mere possession of such material, along with its publication, is a short step from criminalizing journalism to the imprisonment and murder of reporters, such as Jamal Khashoggi in the Saudi consulate in 2018 in Istanbul. While Assange was sheltering in the Ecuadorian Embassy in London, the CIA discussed kidnapping and assassinating him following the release of the Vault 7 documents.

Protest against the Espionage Act

The Espionage Act has been abused in the past. President Woodrow Wilson used it to throw socialists, including Eugene V. Debs, in prison for opposing America's participation in World War I. But not until the Trump administration was it turned on the press.

Wholesale government surveillance, about which many charged under the Espionage Act tried to warn the public, includes surveillance of journalists. The surveillance of the press, along with those who attempt to inform the public by providing information to reporters, has largely shut down investigations into the machinery of power. The price of telling the truth is too costly.

Hale, trained in the army as a Mandarin linguist, was uneasy the moment he began working in the secretive drone program.

"I needed a paycheck," he says of his work in the Air Force and later as a private contractor in the drone program, "I was homeless. I had nowhere else to go. But I knew it was wrong."

While stationed at Fort Bragg, North Carolina, he took a week off in October 2011 to camp out in New York's Zuccotti Park during the Occupy Wall Street movement. He wore his uniform — a gutsy act of open defiance for someone on active duty— and held up a sign that read, "Free Bradley Manning," who had not yet announced her transition.

"I slept in the park," he says. "I was there the morning [Mayor] Bloomberg and his girlfriend made the first attempt to clear the occupiers. I stood with thousands of protestors, including Teamsters and communications workers, who ringed the park. The police backed down. I learned later that while I was in the park, Obama ordered a drone strike in Yemen that killed Abdulrahman Anwar al-Awlaki, the 16-year-old son of the radicalized cleric Anwar al-Awlaki, killed by a drone strike two weeks earlier."

Hale was deployed a few months later to Afghanistan's Bagram Air Force Base.

He described his work in a letter to the judge:

> In my capacity as a signals intelligence analyst stationed at Bagram Airbase, I was made to track down the geographic location of handset cell phone devices believed to be in the possession of so-called enemy combatants. To accomplish this mission required access to a complex chain of globe-spanning satellites capable of maintaining an unbroken connection with remotely piloted aircraft, commonly referred to as drones. Once a steady connection is made and a targeted cell phone device is acquired, an imagery analyst in the U.S., in coordination with a drone pilot and camera operator, would take over using information I provided to surveil everything that occurred within the drone's field of vision. This was done, most often, to document the day-to-day lives of suspected militants. Sometimes, under the right conditions, an attempt at capture would be made. Other times, a decision to strike and kill them where they stood would be weighed.
>
> The first time that I witnessed a drone strike came within days of my arrival to Afghanistan. Early that morning, before dawn, a group of men had gathered together in the mountain ranges of Patika province around a campfire carrying weapons and brewing tea. That they carried weapons with them would not have been considered out of the ordinary in the place I grew up, much less within the virtually lawless tribal territories outside the control of the Afghan authorities. Except that among them was a suspected member of the Taliban, given away by the targeted cell phone device in his pocket. As for the remaining individuals, to be armed, of military age, and sitting in the presence of an alleged enemy combatant was enough evidence to place them under suspicion as well. Despite having peacefully assembled, posing no threat, the fate of the now tea drinking men had all but been fulfilled. I could only look on as I sat by and watched through a computer monitor when a sudden, terrifying flurry of hellfire missiles came crashing down, splattering purple-colored crystal guts on the side of the morning mountain.

Since that time and to this day, I continue to recall several such scenes of graphic violence carried out from the cold comfort of a computer chair. Not a day goes by that I don't question the justification for my actions. By the rules of engagement, it may have been permissible for me to have helped to kill those men — whose language I did not speak, whose customs I did not understand, and whose crimes I could not identify

— in the gruesome manner that I did. Watch them die. But how could it be considered honorable of me to continuously have laid in wait for the next opportunity to kill unsuspecting persons, who, more often than not, are posing no danger to me or any other person at the time. Nevermind honorable, how could it be that any thinking person continued to believe that it was necessary for the protection of the United States of America to be in Afghanistan and killing people, not one of whom present was responsible for the September 11th attacks on our nation. Notwithstanding, in 2012, a full year after the demise of Osama bin Laden in Pakistan, I was a part of killing misguided young men who were but mere children on the day of 9/11.

Hale drifted after leaving the Air Force, dropped out of the New School where he had been attending college, and was lured back into operating drones in 2013 by the private defense contractor National Geospatial-Intelligence Agency where he worked as a political geography analyst between December 2013 and August 2014.

"I was making $80,000 a year," he says into the receiver. "I had friends with college degrees who could not make that kind of money."

Inspired by peace activist David Dellinger, Hale decided to become a "traitor" to "the American way of death." He would make amends for his complicity in the killings, even at the cost of his freedom. He leaked 17 classified documents that exposed the high number of civilian deaths from drone strikes. He became an outspoken and prominent critic of the drone program.

Because Hale was charged under the Espionage Act, he was not permitted to explain his motivations to the court. He was also forbidden from providing evidence to the court that the drone assassination program killed and wounded large numbers of noncombatants, including children.

"Evidence of the defendant's views of military and intelligence procedures would needlessly distract the jury from the question of whether he had illegally retained and transmitted classified documents, and instead convert the trail into an inquest of U.S. military and intelligence procedures," government attorneys said in a motion at Hale's trial.

"The defendant may wish for his criminal trial to become a forum on something other than his guilt, but those debates cannot and do not inform the core questions in this case: whether the defendant illegally retained and transferred the documents he stole," the government motion continued.

Drones often fire Hellfire missiles equipped with an explosive warhead weighing about 20 pounds. A Hellfire variant, known as the R9X, carries an inert warhead. Instead of exploding, it hurls about 100 pounds of metal through a vehicle. The missile's other feature includes six long blades tucked inside which deploy seconds before impact, shredding anything in front of it — including people.

Drones hover 24 hours a day in the skies over countries including Iraq, Somalia, Yemen, Pakistan, Syria and, before our defeat, Afghanistan. Operated remotely from Air Force bases as far away from the target sites as Nevada, drones fire ordinance that instantly and without warning obliterates homes and vehicles or kills clusters of people. Hale found the jocularity of the young drone operators, who treated the killings as if they were an enhanced video game, disturbing. Child victims of drone attacks were dismissed as "fun-sized terrorists."

Those who survive drone strikes are often badly maimed, losing limbs, suffering severe burns and shrapnel wounds, and losing their vision and hearing.

In a statement he read at his sentencing on July 27, 2021, Hale said: "I think of the farmers in their poppy fields whose daily harvest will gain them safe passage from the warlords, who will, in turn, trade it for weapons before it is synthesized, repackaged, and re-sold dozens of times before it finds its way into this country and into the broken veins of our nation's next opioid victim. I think of the women who, despite living their entire lives never once allowed to make so much as a choice for themselves, are treated as pawns in a ruthless game politicians play when they need a justification to further the killing of their sons & husbands. And I think of the children, whose bright-eyed, dirty faces look to the sky and hope to see clouds of gray, afraid of the clear blue days that beckon drones to come carrying eager death notes for their fathers."

"As one drone operator put it," he read in court, "'Do you ever step on ants and never give it another thought?' That's what you're made to think of the targets. They deserved it, they chose their side. You had to kill a part of your conscience to keep doing your job — ignoring the voice inside telling you this wasn't right. I, too, ignored the voice inside as I continued walking blindly towards the edge of an abyss. And when I found myself at the brink, ready to give in, the voice said to me, 'You, who had been a hunter of men, are no longer. By the grace of God you've been saved. Now go forth and be a fisher of men so that others might know the truth'."

It was, ironically, the election of Obama that encouraged Hale to join the Air Force.

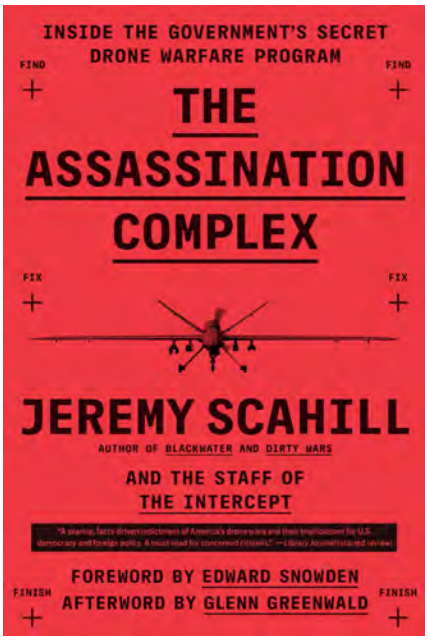
"I thought Obama, who as a candidate opposed the war in Iraq, would end the wars and lawlessness of the Bush administration," he says.

However, a few weeks after he took office, Obama approved the deployment of an additional 17,000 troops to Afghanistan, where 36,000 U.S. troops and 32,000 NATO troops were already deployed. By the end of the year, Obama increased troop levels in Afghanistan again by 30,000, doubling U.S. casualties. He also massively expanded the drone program, raising the number of drone strikes from several dozen the year before he took office to 117 by his second year in office. By the time he left office, Obama had presided over 563 drone strikes that killed approximately 3,797 people, many of whom were civilians.

Obama authorized "signature strikes" allowing the CIA to carry out drone attacks against groups of suspected militants without getting positive identification. His administration approved "follow-up" or "double-tap" drone strikes, which deployed drones to strike anyone who assisted those

injured in the initial drone strike. The Bureau of Investigative Journalists reported in 2012 that "at least 50 civilians were killed in follow-up strikes when they had gone to help victims," during Obama's first three years in office. Additionally, "more than 20 civilians have also been attacked in deliberate strikes on funerals and mourners" the report read. Obama expanded the footprint of the drone program in Pakistan, Somalia and Yemen, and established drone bases in Saudi Arabia and Turkey.

"There are several such lists, used to target individuals for different reasons," Hale writes in an essay titled, "Why I Leaked the Watchlist Documents," originally published anonymously in May 2016 in the book *The Assassination Complex.*



"Some lists are closely kept; others span multiple intelligence and local law enforcement agencies," Hale writes in the essay. "There are lists used to kill or capture supposed 'high-value targets', and others intended to threaten, coerce, or simply monitor a person's activity. However, all the lists, whether to kill or silence, originate from the Terrorist Identities Datamart Environment (TIDE), and are maintained by the Terrorist Screening Center at the National Counterterrorism Center. The existence of TIDE is unclassified, yet details about how it functions in our government are completely unknown to the public. In August 2013 the database reached a milestone of one million entries. Today, it is thousands of entries larger and is growing faster than it has since its inception in 2003."

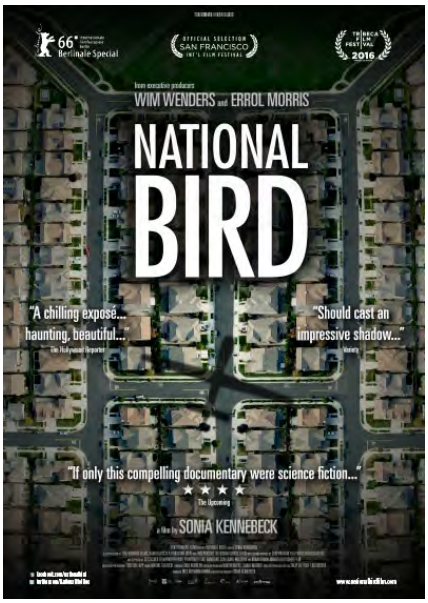
The Terrorist Screening Center, he writes, not only stores names, dates of birth, and other identifying information of potential targets but also stores "medical records, transcripts, and passport data; license plate numbers, email, and cell-phone numbers (along with the phone's International Mobile Subscriber Identity and International Mobile Station Equipment Identity numbers); your bank account numbers and purchases; and other sensitive information, including DNA and photographs capable of identifying you using facial recognition software."

Suspects' data is collected and pooled by the intelligence alliance formed by Australia, Canada, New Zealand, the United Kingdom and the United States, known as the Five Eyes. Each person on the list is assigned a TIDE personal number, or TPN.

"From Osama bin Laden (TPN 1063599) to Abdulrahman Awlaki (TPN 26350617), the American son of Anwar al Awlaki, anyone who has ever been the target of a covert operation was first assigned a TPN and closely monitored by all agencies who follow that TPN long before they were eventually put on a separate list and extrajudicially sentenced to death," Hale wrote.

As Hale exposed in the leaked documents, the more than one million entries in the TIDE database include about 21,000 U.S. citizens.

"When the President gets up in front of the nation and says they are doing everything they can to ensure there is near certainty there will be no civilians killed, he is saying that because he can't say otherwise, because anytime an action is taken to finish a target there is a certain amount of guesswork in that action," Hale says in the award-winning documentary "National Bird," a film about whistleblowers in the U.S. drone program who suffered moral injury and PTSD. "It's only in the aftermath of any kind of ordinance being dropped that you know how much actual damage was done. Oftentimes, the intelligence community is reliant, the Joint Special Operations Command, the CIA included, is reliant on intelligence coming afterwards that confirms that who they were targeting was killed in the strike, or that they weren't killed in that strike."



"The people who defend drones, and the way they are used, say they protect American lives by not putting them in harm's way," he says in the film. "What they really do is embolden decision makers because there is no threat, there is no immediate consequence. They can do this strike. They can potentially kill this person they are so desperate to eliminate because of how potentially dangerous they could be to the U.S. But if it just so happens that they don't kill that person, or some other people involved in the strike get killed as well, there are no consequences for it. When it comes to high-value targets, [in] every mission you go after one person at a time, but anybody else killed in that strike is blankly assumed to be an associate of the targeted individual. So as long as they can reasonably identify that all of the people in the field view of the camera are military-aged males, meaning anybody who is believed to be age 16 or older, they are a legitimate target under the rules of engagement. If that strike occurs and kills all of them, they just say they got them all."

Drones, he says, make remote killing "easy and convenient."

On August 8, 2014, the FBI raided Hale's home. It was his last day of work for the private contractor. Two FBI agents, one male and one female, shoved their badges in his face when he opened the door. About two dozen agents, pistols drawn, many wearing body armor, followed behind. They

photographed and ransacked every room. They confiscated all his electronics, including his phone.

He spent the next five years in limbo. He struggled to find work, fought off depression and contemplated suicide. In 2019, the Trump administration indicted Hale on four counts of violating the Espionage Act and one count of theft of government property. As part of a plea deal, he pled guilty to one count of violating the Espionage Act.

"I am here to answer for my own crimes and not that of another person," he said at his sentencing. "And it would appear that I am here today to answer for the crime of stealing papers, for which I expect to spend some portion of my life in prison. But what I am really here for is having stolen something that was never mine to take: precious human life. For which I was well-compensated and given a medal. I couldn't keep living in a world in which people pretended things weren't happening that were. My consequential decision to share classified information about the drone program with the public was a gesture not taken lightly, nor one I would have taken at all if I believed such a decision had the possibility of harming anyone but myself. I acted not for the sake of self-aggrandizement but that I might some day humbly ask forgiveness."

I know a few Daniel Hales. They made my most important reporting possible. They enabled truths to be told. They held the powerful accountable. They gave a voice to the victims. They informed the public. They called for the rule of law.

I sit across from Hale and wonder if this is the end, if he, and others like him, will be completely silenced.

Hale's imprisonment is a microcosm of the vast gulag being constructed for all of us.

Chris Hedges is a Pulitzer Prize–winning journalist who was a foreign correspondent for fifteen years for *The New York Times,* where he served as the Middle East Bureau Chief and Balkan Bureau Chief for the paper. He previously worked overseas for *The Dallas Morning News*, *The Christian Science Monitor*, and NPR. He is the host of show *The Chris Hedges Report.*

Chris Hedges

The whistleblower crackdown

John Kiriakou
Consortium News, 25 July 2022

THIS IS National Whistleblower Week, with Saturday marking National Whistleblower Appreciation Day. The National Whistleblower Center in Washington has its annual lunch, seminar and associated events scheduled. Whistleblowers from around the U.S. attend, a couple members of Congress usually show up and we talk about how important it is to speak truth to power.

I've been attending these events for much of the past decade. But I'm not sanguine about where our efforts stand, especially on behalf of national security whistleblowers. Since I blew the whistle on the C.I.A.'s torture program in 2007 and was prosecuted for it in 2012, I think the situation for whistleblowers has grown far worse.

In 2012, when I took a plea to violating the Intelligence Identities Protection Act of 1982 for confirming the name of a former C.I.A. colleague to a reporter *who never made the name public*, I was sentenced to 30 months in a federal prison.

In 2015, former C.I.A. officer Jeffrey Sterling, who blew the whistle on racial discrimination at the agency, was sentenced to what Judge Leonie Brinkema called "Kiriakou plus 12 months," because I had taken a plea and Jeffrey had had the unmitigated gall to go to trial to prove his innocence. So, he ended up with 42 months in prison.

Things just got worse from there.

The prosecutors of drone whistleblower Daniel Hale asked Judge Liam O'Grady to sentence him to 20 years in prison. O'Grady instead gave Hale 46 months. But to spite him, and to show prosecutors' anger with the sentence, the Justice Department ignored the judge's recommendation that Hale be sent to a low-security hospital facility in Butner, North Carolina, and instead incarcerated him in the supermax facility in Marion, Illinois, with no treatment for his debilitating post-traumatic stress disorder.

I was in the courtroom during Hale's sentencing. When prosecutors asked for the draconian sentence, Hale's attorneys cited my sentence of 30 months and Sterling's 42 months. Prosecutors retorted that they had "made a mistake with Kiriakou. His sentence was far too short."

Light projection plea for Daniel Hale's pardon on the National Gallery of Art in Washington, DC, 26 June 2021

It was clear that since my own case, the Justice Department's ongoing prosecutions of national security whistleblowers weren't discouraging people from going public with evidence of waste, fraud, abuse, or illegality in the intelligence community. Perhaps, they thought, tougher sentences would do it. Don't count on it, I say.

In the meantime, I ran into another national security whistleblower at an event recently. He told me that the F.B.I. had recently paid him a visit. I chuckled and said, "Because you're so close to them and they've been so kind to you?"

We laughed for a moment, but he was serious. He is still on probation and the F.B.I. offered to get that probation lifted if he would tell them anything and

everything he knows about Julian Assange and Ed Snowden. He told them that he speaks through his attorney and wanted no further contact with them. His attorney told the F.B.I. that his client had nothing to say, would tell them nothing about Assange or Snowden even if he knew something and to not contact his client again. They haven't.

The Assange nightmare

If you're reading this, you've likely followed the nightmare that Julian Assange has been experiencing for years now. He could be extradited to the United States by next year and he faces more than a lifetime in prison. That's the Justice Department's goal — that Assange die in a U.S. prison. Ed Snowden likely faces the same fate if he were to find his way back to the U.S.

Pro-Assange protester outside the High Court in London, 22 January 2022

In order to try to smooth the path for Assange's extradition, prosecutors have promised British authorities that Assange would not be placed in a Communications Management Unit or a Special Administrative Unit, where his access to the outside world would be practically nil.

They've also promised that he would not be placed in solitary confinement.

But that's all nonsense. It's a lie. Prosecutors have literally no say in where a prisoner is placed. It's not up to the judge and it's not up to the prosecutors. Placement is solely at the discretion of the Bureau of Prisons (on recommendation from the C.I.A., which spied on Assange and his lawyers) and they haven't made any promises to anybody.

Belmarsh Prison in London is awful. But Supermax Marion, Supermax Florence, US penitentiaries Springfield, Leavenworth and Lewisburg and any of the other American hell-holes where Assange and other whistleblowers are and can be placed would be worse.

Though it's National Whistleblower Week, we can't pause to celebrate. We can't bask in minor successes. We have to keep up the fight because that's what the Justice Department is doing.

John Kiriakou is a former C.I.A. counter-terrorism officer and a former senior investigator with the Senate Foreign Relations Committee. John became the sixth whistleblower indicted by the Obama administration under the Espionage Act—a law designed to punish spies. He served 23 months in prison as a result of his attempts to oppose the Bush administration's torture program.

Pharmaceutical industry and FDA use mob tactics to silence whistleblowers

Richard Sears
Mad in America, 21 June 2022

Peter Gøtzsche argues that we should consider allowing whistleblowers to publish anonymously for their safety.

IN A NEW ARTICLE published in the *Indian Journal of Medical Ethics,* Peter Gøtzsche confronts the precarious position of whistleblowers who speak out against the pharmaceutical industry.

Academic journals typically do not publish articles anonymously, and anonymous sources are met with suspicion. While Gøtzsche acknowledges that named authorship is important in some contexts, he also argues that speaking up about corruption of academia and medicine by industry money has disastrous professional consequences and prevents many potential whistleblowers from coming forward. Therefore, to protect against industry corruption and prevent lives from being lost to prescription drug deaths, he argues that we must allow anonymity in authorship and in sources that speak up from within the industry.

"Healthcare is heavily influenced by vested interests, which are often financial, but academic prestige and protection of guild interests also play a major role. If anonymous authorship is not allowed, many potential whistleblowers would prefer to keep quiet, even though their stepping forward would serve the public interest and might save many lives, particularly by reducing prescription drug deaths. This is especially important since drugs are the third leading cause of death in the Western world."

Numerous authors have written about the overwhelming corruption within academia and medicine due primarily to pharmaceutical industry money. From education to research to practice, there are few places that industry money cannot reach.

Researchers have found evidence of corruption in continuing education programs for healthcare providers in which they are taught to push dangerous, often ineffective drugs without concern for their consequences.

The pharmaceutical industry has bribed its way into a system of "ghost management" in which they use their money to corrupt researchers and institutions, determining what research gets funded, what gets published, and what is systematically ignored. This system has caused some researchers to view academic journals as little more than infomercials for the pharmaceutical industry. Other authors have noted that corrupt, ghost-managed research is much more likely to be published than rigorous science critical of that process.

Not content with simply corrupting medical education and academic journals, the industry also bribes physicians directly to increase prescriptions for their products. This practice is simultaneously destructive to patient care while increasing the costs associated with that care.


Peter Gøtzsche

When whistleblowers come forward to expose this corruption, they routinely face intimidation, ostracization, retaliatory firings, contempt of their colleagues and superiors, etc. Peter Gøtzsche, the author of the current work, is no stranger to this treatment. He was expelled from the Cochrane Foundation, which he had helped found, due to his criticism of psychiatry and psychiatric drugs. After his expul-

sion, four board members left in protest and leaked the tapes of his trial. The leaked tapes revealed an embarrassing show trial in which many of his colleagues unabashedly defended industry corruption.

Whistleblowers are commonly fired with little consequence. Some have even had their sanity called into question by being forced to undergo a mental health evaluation due to challenging industry and institutional corruption. Yet, although the consequences for whistleblowers are swift and terrible, the programs and institutions they expose often continue to operate virtually unchanged despite the corruption.

The current work begins by laying out the fate of whistleblowers. On average, whistleblower cases take five years to be resolved. During this time, the industry often brings considerable power to bear against the whistleblower. Next, the author presents research from Peter Rost in which he examined the fate of 233 whistleblowers.

"90% were fired or demoted, 27% faced lawsuits, 26% had to seek psychiatric or physical care, 25% suffered alcohol abuse, 17% lost their homes, 15% got divorced, 10% attempted suicide, and 8% went bankrupt."

Regulatory agencies have largely been ineffective in regulating the pharmaceutical industry. The author points to several egregious actions (and inactions) by the Food and Drug Administration (FDA) in the United States. For example, the FDA approved rofecoxib, an arthritis medication that caused significant cardiovascular risks, despite ample evidence of its potential for harm, because they did not have "complete certainty" that it was detrimental to cardiovascular health. The drug was so dangerous it was pulled by the manufacturer (not the FDA) a few years after it arrived on the market. The FDA also approved the diabetes drug rosiglitazone despite it causing thrombosis and being pulled from European markets.

The FDA has approved drugs based on data the agency knew was fraudulent and has even pointed to data that clearly showed a drug was not safe as evidence that it was. FDA scientists are routinely intimidated by their superiors when they find evidence of harm and are forced to remain silent or face career ruin. These same superiors often go on to accept high-paying jobs within the industry they were supposedly regulating.

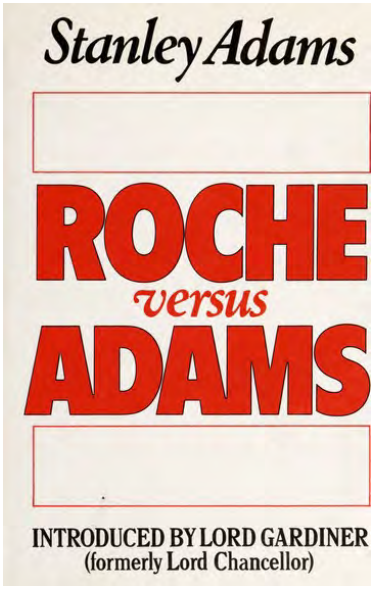
The FDA has also overruled the recommendations of its own experts, likely to enrich those atop its hierarchy. They installed spyware on scientists' computers that had alerted them about safety concerns. The FDA also suppressed the data linking antidepressants to suicide in teenagers. When that data was eventually leaked, the FDA investigated the leak rather than the egregious suppression of data that cost people their lives.

When David Graham, then associate director of the FDA Office of Drug Safety, showed that rofecoxib increases heart disease, the FDA suppressed his report. FDA management filed several complaints against him they knew to be false, and an FDA director promised to notify Merck, the company that produced the dangerous drug, before Graham's research was made public so they would have time to prepare their media response. Ultimately, Graham was fired from the agency.

Rofecoxib

Merck subsequently undertook a campaign to persecute and discredit doctors critical of its dangerous drug, including expelling them from academic positions. Scientists that have uncovered industry fraud have routinely received death threats and intimidating phone calls and have been followed by industry goons. One researcher received a picture of his daughter leaving for school in an anonymous letter. The author points out that the actions of pharmaceutical companies and the agency supposedly regulating them are identical to those used by organized crime. The author estimates that rofecoxib and rosiglitazone have killed 200,000 people.

Whistleblower Stanley Adams reported problems with the pharmaceutical company Roche in 1973. A government agent leaked his name to Roche. Adams was ultimately arrested in Switzerland and convicted of giving economic information to a foreign entity. His wife subsequently killed herself.



During the time of Covid-19, we have seen the introduction of many non-effective interventions, some of which may have been harmful. Despite data showing that they may not significantly reduce infection rates, questioning the mandatory wearing of face masks has been met with nasty attacks and ridicule. Raising concerns over experimental vaccines that went through no animal testing and for which we have no data on the long-term effects has caused researchers to be labeled "antivaxx."

According to the author, the current environment is dire for whistleblowers. From mob-like tactics carried out by the FDA and pharmaceutical companies to the silencing of any debate around the usefulness and danger of treatments and the labeling of anyone refusing to fall in line as foolish, pointing out problems with industry products is not worth the trouble for most people in a position to do so. For these reasons, the author argues that allowing the anonymous

publication of scientific papers, commentaries, and letters could save lives.

While Gøtzsche does believe we should consider anonymous publication of scientific papers, peer review should enjoy no such privilege. Anonymous peer review allows industry agents to act under the guise of "science" while systematically sabotaging work critical of their masters. The author concludes:

"We should never forget that the business model of drug companies is organized crime; that our prescription drugs are the third leading cause of death after heart disease and cancer in the Western world; and that most of those who died didn't need the drug that killed them. Here, I have documented the corruption in drug regulation, and I suggest that many lives could be saved by allowing conscientious people in drug regulatory agencies to report their observations of regulatory misconduct or corruption anonymously."

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Gøtzsche, P. C. (2022). Anonymous authorship may reduce prescription drug deaths. *Indian Journal of Medical Ethics*, 01–05. https://doi.org/10.20529/ijme.2022.041

CIA whistleblower reflects on persecution of Julian Assange

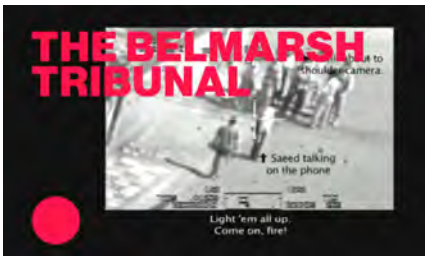
Jeffrey Sterling
Eurasia Review, 31 July 2022

IT IS DIFFICULT to talk about happenings in the world other than the continued, appalling Russian invasion of Ukraine and the recent mass shootings in Buffalo, Uvalde, Chicagoland, and elsewhere. Then, there is the Supreme Court which continues down a judicial road of eroding personal rights and towing the conservative party line. I don't want to take attention away from those outrages.

However, the shadow of one tragedy is not dispelled by the light of another.

I continue to have passion to shed light on and right the wrongs of the Espionage Act and how the United States government is using it to target not only whistleblowers, but also anyone who dares reveal its transgressions and illegalities.

I was extremely honored to participate in the Belmarsh Tribunal which, in addition to calling for the closure of Guantanamo Bay, also decried the international disgrace that is the potential extradition of Julian Assange. This affront to accountability, press freedom, and freedom of speech is on stage for the entire world to see, yet I wonder who is paying attention.



Assange has been held since April 2019 in Belmarsh prison, which is what many call the United Kingdom's version of our super-max prison. He has been held in solitary confinement for every moment of every day at Belmarsh while the U.S. makes an incredible effort to have him extradited to face charges of violating the Espionage Act. The U.K. courts have been all too obliging by issuing rulings, with no support in truth, that Assange can and should be extradited.

Belmarsh Prison

And—a final blow to demonstrate its willingness to be the puppet government that the U.S. needs to continue its Espionage Act campaign of terror—on June 17, Priti Patel, the U.K. Home Secretary certified Assange's extradition, clearing the way for Assange to be turned over to the United States. Assange is appealing, but given U.K. reticence, it is only a matter of time until Assange will find himself, as I did, in the Alexandria jail being charged with violating the Espionage Act.

What I have found quite disturbing is that the U.K. courts and the Home Secretary have been all too willing to play the dutiful puppets to their U.S. handlers. When I was in the CIA, a handler was the person who manages every aspect of an asset's life that is necessary and helpful for the purpose of collecting intelligence. Sometimes, it is necessary for a handler to be nebulous or downright lie to an asset to keep focus on the objective. If the handler gets what he wants, that is all that matters.

The U.S. has handled the U.K. legal system and government officials very astutely. The U.K. has believed the lies being championed by the U.S. ranging from characterizing Assange as a national security threat and spy to touting a safe and supportive environment Assange will face in U.S. prisons. Yet, the real purpose is to prosecute Assange under the Espionage Act for political and vengeful reasons.

U.K. courts have found every reason not to challenge the merits of the U.S. case against Assange, and the U.K. government has followed suit. The U.S. handling of the U.K. should be considered the epitome of utilizing sources and methods to achieve an objective without the asset knowing what it is actually being accomplished.

But the U.K. doesn't exactly have clean hands in this travesty. The U.K. version of the Espionage Act is the Official Secrets Act, enacted in 1911, which also deals with ostensibly protecting state secrets. The very U.K. official who signed off on Assange's extradition has proposed sweeping new reforms which prescribe harsher punishments for journalists and their sources. Under the reforms, the U.K. government will "… not consider that there is necessarily a distinction in severity between espionage and the most serious unauthorized disclosures."

Just like the Espionage Act, complete deference is given to the government to define what is considered serious disclosures. Just like the 1917 American version, the original objective was to fight espionage designed to assist the country's foreign enemies. Over time, both Acts have evolved as tools to quash. One must wonder which of the countries came up with the idea to use either law to hide government transgressions by silencing whistleblowers.

Seems the U.S. and the U.K. are feeding off one-another's ever expanding objective not to be held accountable

for their illegal actions by feigning imagined threats to national security. Indeed, what has been happening to Assange is the very definition of complicity between two countries to jointly undermine accountability and freedom of speech.

Jeffrey Sterling

My goal with The Project for Accountability of the RootsAction Education Fund has been to shed light on government wrongdoings and illegalities as well as demand accountability from those in power. What is happening with Assange is government running amok over and through the law to reach those who would expose the truth. But who should such a call for accountability be directed to? Unfettered power infects from the top down.

Joe Biden should not only answer for but also explain the purpose and intent for seeking to try Julian Assange for breaking a U.S. law. Yet, as a member of the Obama administration that ignited the firestorm that has been the use of the Espionage Act to punish whistleblowers and avoid truth, he has somewhat expectedly been silent. He should not be able to hide behind any sort of plausible deniability because he was not in charge at the time. And, what about Kamala Harris? Hasn't she touted a record of supporting protection for whistleblowers? Seems the weight of power and the lack of accountability have a debilitating effect on conscience.

The same inquiry should be made upon the mainstream media. Their lack of interest and silence on Assange are disturbing. Possibly out of self-preservation, the media are holding on to a misconception that they are not the same as Assange, that Assange is not a reporter. Only the arrogance of an egoist would refuse to acknowledge a clear and present danger to press freedom and free speech. Maybe what happened during my persecution holds an answer.

When the reporter Jim Risen was in danger of being called to the stand and threatened with jail if he did not testify, the mainstream media mobilized to protect one of their own. Once the danger was over, so was the interest. Much like in my situation, self-preservation will prevent the media from raising a voice. They should understand that if Assange is extradited and convicted, there will be nothing to stop any reporter, anywhere, from being charged under the Espionage Act for merely reporting about government wrongdoing. Their silence, much to their own eventual detriment, is empowering the continued illegal use of the Espionage Act.

But there has been a promising development. Representative Rashida Tlaib has proposed Espionage Act reforms that would require the U.S. to prove a specific intent to harm the U.S., allow a defendant to testify about their purpose in revealing information, and create an affirmative defense for revelations in the public interest, among other reforms. This is a momentous opportunity for accountability and transparency to return to the rubric of governance. I whole-heartedly support Tlaib's efforts as should we all.

I am thankful for the support I have received through The Project for Accountability; it has helped me find a purpose that I didn't know I needed. Over the years, I have been speaking and writing on behalf of whistleblowers and decrying the Espionage Act as a tool of revenge. Assange's extradition will be a pinnacle moment for accountability. The U.S. must be called out on its vendetta against Assange and whistleblowers in general. The media and an entire government have refused to make that call, but I will not. I have been where Assange is going, I do not wish that on anyone, including the prosecutors that wrongfully tried me and the jury that wrongfully convicted me.

Jeffrey Sterling is a former CIA case officer who was at the Agency, including the Iran Task Force, for nearly a decade. He filed an employment discrimination suit against the CIA, but the case was dismissed as a threat to national security. He served two and a half years in prison after being convicted of violating the Espionage Act. No incriminating evidence was produced at trial and Sterling continues to profess his innocence. His memoir, *Unwanted Spy: The Persecution of an American Whistleblower,* was published in late 2019. He is the coordinator of The Project for Accountability of the RootsAction Education Fund.

Whistleblowing is broken

Like so much else, the act of informing on bad actors for good reasons has become tainted.

Ian Bogost

The Atlantic, 25 August 2022

WHEN THE HACKER turned corporate-cybersecurity specialist Peiter Zatko went to work for Twitter in 2020, he thought he could help the company improve its practices after some embarrassing breaches. But either he couldn't help Twitter, or Twitter didn't want his aid—less than two years later the company fired him. Last month he issued a massive complaint against it to the Securities and Exchange Commission, the Department of Justice, and the Federal Trade Commission, alleging widespread malfeasance and fraud at the social network.

Earlier this week, after *The Washington Post* and CNN broke news of the complaint, newspapers everywhere started calling Zatko a "whistleblower," and I read the word so many times that it ceased to bear meaning. Zatko's accusations are serious, but the complaint, and the reporting I've read about it, also makes them seem amorphous and inchoate, disconnected from real stakes. Zatko's situation didn't exactly have the sensibility of, say, a factory-farm foreman revealing that a major company is poisoning its chicken thighs, or a mid-level bureaucrat exposing a government perpetrating atrocities in the name of its citizens.

Tech companies are so big and so powerful and do so many bad things without consequence, it's understandable that people may feel they have no option other than blowing the whistle on these companies, the way a civil servant might on a government. But it's

an imperfect system for meting out justice. The problem lies less with Zatko and his specific accusations—many of which look pretty bad for Twitter—and more with the erosion of the whistleblower as a concept in contemporary life. That's a path Zatko didn't forge, even if he's treading it. Whistleblowers used to be underdogs, willing to ruin their lives in the pursuit of the truth, so that its revelation might serve the commons. Now they're more like corporate-espionage influencers, whose actions put attention-seeking and material gain before, or in place of, justice.

Whistleblowing has a very long history. In 1777, during the American Revolution, 10 sailors aboard the warship U.S.S. Warren met in secret to conspire against a man much more powerful than them. Commodore Esek Hopkins, the commander of the Continental Navy, had tortured British sailors; the group wrote a petition to the Continental Congress, which, swayed by their case, suspended Hopkins. But the commander retaliated, and Warren sailors Samuel Shaw and Richard Marven were arrested and jailed. In response to that obviously corrupt outcome, Congress enacted what is considered to be the world's first whistleblower law. It didn't just protect righteous actors such as Shaw and Marven; it demanded that others in similar positions act similarly, decreeing that "it is the duty of all persons in the service of the United States, as well as all other inhabitants thereof, to give the earliest information to Congress or other proper authority of any misconduct, frauds or misdemeanors committed by any officers or persons in the service of these states, which may come to their knowledge."

In the following centuries, whistleblowers became symbols of moral honor. The English shipping clerk Edmund Dene Morel was instrumental in exposing the brutal, plantation slave labor in the Congo. The retired Marine general and Medal of Honor recipient Smedley Butler exposed a plot to overthrow the U.S. government during Franklin D. Roosevelt's administration. The epidemiologist Peter Buxtun, working for the U.S. Public Health Service, exposed the Tuskegee Study, in which his employer had denied treatment to Black men infected with syphilis over four decades. The government analyst Daniel Ellsberg leaked the documents that became known as the Pentagon Papers, a secret account of the U.S. government's mishandling of the Vietnam War spanning multiple presidencies. The New York City police officer Frank Serpico disclosed widespread bribery and financial corruption in the force. Edward Snowden, an intelligence contractor, leaked evidence of the NSA's global surveillance programs. (Snowden offers an illustrative example of how messy the designation of "whistleblower" can be. He was charged under the Espionage Act in 2013 and fled to Moscow, where he has lived since.)

Fame often followed their revelations. An entire Whistleblower Cinematic Universe retold the stories of Serpico, Snowden, and others. But that notoriety came as a result of the moral stakes of the revelations and the virtue required to unveil them. Past whistleblowers did more than just expose misdeeds. They selflessly did so from a position of far less power than those they accused, in order to protect or defend others who similarly lack power. The whistleblower is—or was—an actor moved by duty, virtue, or both.

To this day, the formal definition of a whistleblower descends directly from its 18th-century precedent, in the form of laws that encourage actors to reveal misconduct by protecting them if they do so. The protections formally afforded to whistleblowers increased over time, but most of those protections were still afforded to government workers.

That changed relatively recently. In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act became law. Dodd-Frank, passed in the aftermath of the Great Recession (and the wrongdoing by big banks that helped cause it), inaugurated a major shift in whistleblowerdom, especially in the private sector, where other laws generally didn't reach. Crucially, Dodd-Frank added a financial incentive to the sometimes-risky practice of becoming an informant. Under the law, the SEC offers cash rewards for tips that lead to the receipt of monetary sanctions. Since its inception, the SEC has recovered billions of such dollars and awarded a cool $1 billion back to people who helped it get the goods. Money, once the enemy that inspired Serpico to blow a whistle, became a motivation for doing so.

And predictably, whistleblowing has become a business. Stephen M. Kohn, a whistleblower attorney who won one of the largest awards in history, $104 million for a tax-evasion case, wrote a book about the practice, *The New Whistleblower's Handbook*. "Doing what's right," a phrase that appears in the book's subtitle, imbricated with doing what produces financial gain. This is a tremendous shift, and one with enormous consequences: Though some people will argue that whistleblowers deserve financial comfort—in addition to protection from persecution—for having the courage to speak up, society relies on people to tell the truth because it is right, not because they might get paid for it.

Stephen M. Kohn

Zatko may well be acting out of conscience. In his complaint, he calls his disclosures an "ethical obligation" and suggests that he aspires to remain true to a hacker's obligation to notify an affected party of its security-related problems. The complaint exclusively refers to him by his hacker name, Mudge, seemingly to underscore that allegiance. But he is indisputably a different type of actor than the civil-servant whistleblowers of history. And the structures that have arisen around whistleblowing in recent years complicate its appeals to principle alone.

Zatko's complaint against Twitter contains dozens of allegations about what the company did wrong, including lax device security, poor control of its production environment, missaccounting of bot accounts, and more. (A Twitter spokesperson defended the company's security practices to the

Post, and told the paper that "Zatko's allegations appeared to be 'riddled with inaccuracies' and that Zatko 'now appears to be opportunistically seeking to inflict harm on Twitter, its customers, and its shareholders'.") But all throughout the complaint, these claims are framed not principally as misdeeds against best practice, national security, user privacy, or other domains of legitimate concern to the general public. No, they are first presented as evidence of fraud. Defrauding investors is the financial crime for which the SEC can pursue redress and, upon a successful enforcement action, restitution. For every dollar or million that the SEC might recover from Twitter if Zatko's allegations prove actionable, Zatko (and his lawyers) could be entitled to 10 to 30 percent.

Peiter Zatko

John Tye, chief disclosure officer of the nonprofit legal group Whistleblower Aid, which represents Zatko, says the prospect of a reward didn't motivate Zatko. "In fact he didn't even know about the reward program when he decided to become a lawful whistleblower," Tye said in an email. He did so, Tye said, to help the SEC enforce the laws. That's fair enough. But enforcing securities law—already a somewhat dubious moral prospect compared with historical whistleblower interventions—now entails a reward whether you ask for one or not. Remuneration infects the process. Kohn did call it the *new* whistleblowing, after all.

Whistleblower Aid also counts Frances Haugen, the Facebook Papers leaker, as a client. The eBay billionaire Pierre Omidyar has funded both Whistleblower Aid and Haugen's efforts, a philanthropic gesture that might reasonably be construed as realpolitik to expose legitimate wrongdoing by some of the most powerful companies in the world, but that also amounts to the creation of a fundraising and organization-building activity—a whole jobs program surrounding tech oppositionalism.

And then there's the dude who has the most to gain from Zatko's supposedly righteous revelations about Twitter: Elon Musk, the world's richest man, who still hopes he doesn't have to write a $44 billion check to buy the company. Zatko's extensive warnings about the number of bots on Twitter, an issue that obsesses Musk, seem startlingly aligned with Musk's interests rather than those of misled investors, let alone the public. (Tye, Zatko's representative, told me that his client began the process that led to this disclosure in December, before Musk expressed any interest in acquiring Twitter. Musk has not been involved "in any way," Tye said in an email.)

Zatko's complaint does issue some concerning accusations against his former employer. According to Zatko, Twitter played fast and loose with security, and in a way that might violate a settlement the company reached in 2011 after the FTC alleged major lapses in its data-security practices. But the complaint is also riddled with gripes that speak more to Zatko's dissatisfaction than Twitter's alleged corruption. His bosses didn't take his advice, and Zatko didn't like that. Then they froze him out, and fired him. Maybe doing so constitutes fraud or violation—the SEC and FTC will have to sort that matter out. But even if so, Zatko's barrage of accusations might not amount to the "explosive" revelation that some news coverage of the complaint has described. The document reads like a paid legal expert's report on why Twitter committed fraud by a disgruntled former employee who stands to gain from its exposure, not as a righteous man's case for why a global social network is obviously and grievously dangerous.

But alas, the media cannot resist the temptation to cast the new whistleblowers in the role of the old ones. As I wrote for *The Atlantic* when the Facebook Papers broke, stories such as Daniel Ellsberg's come from the golden age of journalism, when information couldn't find an audience without the aid of a newspaper or magazine or television network. Ad-driven internet companies such as Facebook and Google and Twitter absconded with that access, and the spoils that accompanied it. These companies royally mucked up both the business of journalism and the operation of the democracy the Fourth Estate holds in check; journalists are both right to hold the tech industry's power to account and sometimes overly eager to do so.

Perhaps one of the greatest ironies of the new whistleblowing is that tattling for material scraps is the only way the internet operates. Online life is a constant contest of appearance, both physical and moral. With attention at a premium and content proliferating, all anyone can do is scrabble to claim whatever crumbs any situation might shake loose: a hot take that produces clicks that burnish a reputation; a thirst trap that generates followers to justify sponsorship rates; a megaviral post that yields neither satisfaction nor even SoundCloud listens, but only the passing attention of a million people you've never met. A whistleblower complaint that might yet yield a payday, even if it also reveals a hidden truth.

An amorphous creature has attached itself to the new whistleblowers, like a barnacle on the warship Warren: glory and the influence it might deliver. Once an act that at least aspired toward modesty, whistleblowing entailed sufficient risk that informing on a more powerful actor might still ruin one's life. But now, in the internet age, whistleblowing has become a path—if a terrible, unintuitive one—to fame and its trappings. That glory drives the hungry maw of material success, whether or not the being that devours its spoils thrives or starves. Like everything else, whistleblowing is just another hustle.

Ian Bogost is a contributing writer at *The Atlantic* and the Director of the Program in Film & Media Studies at Washington University in St. Louis. His latest book is *Play Anything.*

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*
https://www.bmartin.cc/dissent/contacts/au_wba/whistle.html

New South Wales contact Cynthia Kardell, phone 02 9484 6895, ckardell@iprimus.com.au

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
Website http://www.whistleblowersqld.com.au
Secretary: Greg McMahon, phone 07 3378 7232

The Whistle
Editor: Brian Martin, bmartin@uow.edu.au
Phone 02 4228 7860
Address: PO Box U129, Wollongong NSW 2500
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Whistleblowers Australia conference

Whistleblowers Australia's annual conference will be held at 9.00am Saturday 19 November at the Uniting Conference Centre, North Parramatta (Sydney), registration from 8.15. It will celebrate whistleblowers past and present, including NZ's child sex trafficking whistleblower Carol O'Connor, Defence whistleblower David McBride and others. Keep up to date with developments by email notices. Contact: Cynthia Kardell, 02 9484 6895, ckardell@iprimus.com.au

Annual General Meeting

Whistleblowers Australia's AGM will be held at 9am Sunday 20 November at the Uniting Conference Centre, North Parramatta (Sydney).

Nominations for national committee positions must be delivered in writing to the national secretary (Jeannie Berger, PO Box 458, Sydney Markets NSW 2129) at least 7 days in advance of the AGM, namely by Sunday 13 November. Nominations should be signed by two financial members and be accompanied by the written consent of the candidate.

Proxies A member can appoint another member as proxy by giving notice in writing to the secretary (Jeannie Berger) at least 24 hours before the meeting. No member may hold more than five proxies. Proxy forms are available online at http://www.whistleblowers.org.au/const/ProxyForm.html.

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