

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

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Remembering Margaret Love

MARGARET LOVE died of Parkinson's disease and dementia on 20 January with her daughter Jill and sister Betty by her side. Margaret was only 72. She'd only just been given the all-clear after breast cancer treatment when she was diagnosed with Parkinson's in 2015. She was still on top of things in the following year, when this photograph was taken.



Some of you will know Margaret. She was also briefly a member of the national committee and a contact for the group.

You can read the article called "Uni bullying, cronyism, malpractice, etc." on page 3 of the January 2004 *Whistle*, which records her successes as a whistleblower. The author is former Channel 9 reporter and whistleblower Derek Maitland, who was also a member at the time.

Marg was a funny, very creative teacher with a knack for business, which is what inspired her to move from academia at the University of New South Wales into contract administration with the Educational Testing Centre (ETC), a new department spearheading the university's move to commercialise the global sale of examination papers.

You'll have to read the article for all the gory bits between 1999 and 2000,

but suffice it to say Margaret won on all fronts with the help of the NSW Audit Office and NSW Ombudsman's Office, before negotiating her departure from the UNSW with her union's help.

Not long after she started teaching English as a second language from her spare bedroom, but it wasn't long before she'd set up her first school, just up the road in Mascot. Over time it grew into two campuses, specialising in English writing with about 500 students at any one time. Her daughter joined her in the business and eventually, took over when she became sick. I think from memory, in about 2018–19.

Other successful campaigns include suing *The Telegraph* for defamation, taking Mascot Council on after a brothel set up shop next door because some of their clients started hanging around her students, and dealing with a former staffer and competitor who stole her course material.

Marg and her cats, Max, Tilly and later Teddy, have been part of my life since picking up the phone one Friday night. Marg was beside herself and barely coherent. Her employer had visited her at her home that day, to get her to sign a worker's compensation claim form. Marg signed it, but she had the wit to realise they weren't planning to help her, but she couldn't work out why. I explained she'd just resigned with immediate effect, voluntarily removing herself from the employed to the insurance liability list. I convinced her she needed to get it back. We game-planned how it would work. I thought it was doomed from the outset, but I was to learn something about Margaret's grit under heavy fire that has served her so well.

The following day she booked herself in at the HR department. The reception was frosty and unbelievably officious. She was cautioned about what she could and couldn't do. "I only want to see my, add to my claim," whispered Marg. I had warned her not to be cocky. The woman sat opposite, hand heavy on the claim form. A short tug-of-war ensued with Marg getting possession on the third pass. The woman left, with a warning glare not to push her luck. Margaret quickly stuffed it deep into her handbag and waited for

a bit, before going to the reception desk. When asked, Marg helpfully informed her she'd decided not to go ahead with it. "You can't do that" followed her out the door and out into the Uni's grounds, where Margaret promptly burst into tears. Getting it back had opened the way for a financial settlement on her terms.

I learnt something vitally important about Margaret that day. She could rustle up real courage under pressure when she needed to, because Margaret is a storyteller. That's what she did day in and day out at her school and that night, when I got the full Billy Connolly version, we fell about laughing on the phone as we re-lived the terror and the wonder of it all.

I'll miss her Billy Connolly take on life, always without the expletives, of course. And it's a wonder really that her Scottish accent didn't carry across to her mainly Chinese students!

— Cynthia Kardell

An insider's take on whistleblowing research

Carol O'Connor

THERE HAVE BEEN many changes since my own whistleblowing experience in the 1990s. Laws have changed, most organisations have adopted policies and procedures, and the role of whistleblowers in raising concerns with increasingly complex organisations is frequently mentioned in the media. I met whistleblowers in London at a time when support groups were forming which were forums for discussing problems associated with whistleblowing. I became interested in understanding more about the impact of whistleblowing on whistleblowers, and thought I could bring to bear the extensive experience I have had in working within mental health, and also working with complex social systems when I was providing consultation with community members. However, when it came to research, I was a complete novice.

To prepare for the study, I read widely on whistleblowing and found it striking how few impact studies there

were in the vast and varied literature on whistleblowing. Retaliation has been of considerable interest and considered to be connected to negative outcomes for whistleblowers, although predictors of retaliation based on whistleblower characteristics have not been found. There are problems in studying retaliation using quantitative methods.

My doctoral study on the impact of whistleblowing is based on interviews with 21 whistleblowers from England, Wales, Scotland and Northern Ireland, 13 women and 8 men aged 22 to 64. I recruited external and internal whistleblowers through contacts obtained from whistleblowing events, a national whistleblowers support group, and making inquiries through professional networks. I was surprised to find how common the experience of whistleblowing is and could have made the study larger, but had to limit the number of interviews to what was manageable.

After analysing the interviews, it was surprising that the outcomes were similar to those reported in early impact studies in the 1990s. The majority of the participants reported losing their jobs, and the seriousness of mental health problems reported by the majority of the participants who did not have prior mental health problems was extremely concerning. Although my main findings were similar to those in Jean Lennane's 1993 study based on a survey of Whistleblowers Australia members, there were two areas of difference: there was no evidence of forced psychiatric assessments or family breakdown except for one participant who said their whistleblowing was very protracted. (In the Lennane study, 7 of 35 participants reported family breakdown.)



A 2019 UK study analysed secondary data from a whistleblower call centre. The researchers found that managers and receptionists were most vulnerable to being fired at an early

stage compared to other occupational groups, but raising a concern more than once for all groups raised the risk of termination. A Dutch study found that whistleblowers experienced a higher incidence of mental health problems than all other groups except adults who had been given a cancer diagnosis. One gap in their research was that they did not enquire about previous mental health problems but did not consider that omission would explain their findings. I did make this inquiry in my study: only one participant reported being treated for mental health problems in the period prior to whistleblowing.

It might be expected that being a manager might offer some protection from job loss, however in my study managers were treated more harshly than other workers. Female managers in the study said they faced humiliating rituals such as their position being advertised/filled before they were dismissed and being escorted out of the building by security in front of colleagues.

None of the managers in the study were employed at the time of interviews and none expected they would be able to find employment at any time in the future. I was not able to explore this finding further, however, it could be understood that the way in which managers were treated through demotion/role removal/dismissal was highly visible to other organisational members. For staff who did not have management responsibilities, the process of exclusion from the organisation was usually more protracted and less visible to other organisational members.

The next stage of the study

After the unexpected finding that outcomes for most whistleblowers have hardly changed compared to the early studies, I re-analysed the interviews to explore possible reasons for the lack of change and what processes whistleblowers could identify to explain the professional and personal outcomes. However, as a novice researcher, I did not know that “why” questions are difficult in research, and this made the study lengthier than I had anticipated.

A small number of participants said their organisation supported them and acted on their concerns. All involved situations in which reports were made about one individual. Note that in the

UK there are well-established inter-agency protocols for reporting harm to children. It was striking in the study that employment arrangements can be complex with employees employed by one body and working in another. On appeal or referral to the police, the initial suspension of the person involved was reversed, and they faced social consequences within the organisation with colleagues taking sides. This group, although they said it had been stressful, did not experience mental health problems, and one of this group said their subsequent work trajectory had been positive after whistleblowing, the only participant to make this comment.



Although it is often assumed that reporting lines are clear in organisations, it was not the case for the study participants. There was an absence of being given clear reporting guidelines; they approached their line manager or head of department as the first step, and when nothing happened, they expressed uncertainty about the next steps. Participants described consulting with a whole range of organisational members, human resource departments, pastors, supervisors, using incident forms, staff surveys, as well as approaches to unions and professional bodies. It is difficult to convey in an academic study the emotionality and different pressures described when they signalled to other organisational members that they wanted to take the concern further up the hierarchy which included warnings to stop. For example, Peter said his manager complimented him on being “moral and outstanding,” empathised with the matter “weighing on his conscience,” but advised him to resign if he wanted to continue raising his concern.

Raising the concern for the first time usually led to being moved within the organisation, for example to another team. Continuing to raise a concern,

particularly through formal channels, triggered processes that eventually led to exclusion from the organisation. As described, in the case of managers, this was direct and visible but there were other processes that led to exclusion, such as criticisms of performance, scrutiny of work, removal of some duties or assignment to unfamiliar areas of work. These indirect and gradual experiences of exclusion were reported by the participants to have had an immediate effect on mental health, leading to contact with health services, particularly GPs. Although the start of this process began with a single event, usually a meeting to discuss performance or other issues, it became a process that some participants described as a “downhill spiral.” There was not one example of this process being reversed once it started.

Retaliation — whether intimidation, harassment, increased scrutiny of work, ostracism or unsafe work — is often classified as being either formal or informal, in other words work-related or social. I found that both work-related and social retaliation resulted in exclusion from the organisation, whether through dismissal or resignation because of untenable conditions and ill health. The three younger participants in the study had been able to re-enter the workplace in their chosen field but this was more problematic for participants in their 40s and 50s. Two participants had given up their registration as they felt the “downward spiral” would begin again if they continued their professional work, and another, one of the few who stayed on in the organisation, described whistleblowing as “a curse” affecting all stages of their career. Some participants described entering a completely different personal world as the framework around work and employment broke down.

Once caught up in this process, participants said it could not be talked about with colleagues, leading to social isolation which impacted as an additional trauma. Tanya said that when meeting former colleagues in town, what had happened could not be talked about and “It is frustrating, stressful and sad. And there is no support.” Many of the participants talked about their life becoming severely restricted socially or even within their household and family such as not joining the family for meals

and withdrawing from social events. A number of participants described that they felt they had entered a completely different and unfamiliar personal world as the framework around work and employment broke down and they described intense personal suffering.

Conclusions

It was significant that almost all participants brought up difficult conditions in their organisation prior to whistleblowing which affected the quality of work and the cohesiveness of work groups. The whistleblowing issue arose when they spoke out about the impact of these conditions on customers/service users/patients. The existence of difficult conditions also explains why raising concerns was met with a lack of response and then negative responses to the person raising them. To date, these deeper contextual issues have not been an area of research interest.

When the underlying processes were identified, it was evident that there were no countervailing forces to halt the processes of exclusion from the organisation and, for some participants, from the workforce. Unions are the only internal source of support, however there was no evidence that unions were effective in stopping or reversing mechanisms of exclusion. In my view it is unrealistic to expect union representatives, who are also employees in the same organisation, to be effective in stopping such powerful organisational processes. Participants who appealed to professional bodies expressed how disappointed they felt when they realised these bodies did not want to get involved in ethical matters with organisations. Most participants explored a legal process once they left the organisation, however this was often out of reach because of the cost, and those that went through court cases said the costs exceeded £100,000 and had deeply impacted the future security of their families.

It is hoped that this and other studies provide a headline that outcomes for whistleblowers have not changed. I would like to see traumatic work experiences taken more seriously, as it was distressing to hear that many participants felt they were not taken seriously when they talked to therapists. This is an area I would like to follow up.

Organisations have huge power over working lives and there needs to be external scrutiny of how that power is exercised. However, such scrutiny is especially difficult when exclusion occurs over a long period. Accounts of how this occurs from a whistleblower’s perspective need to be more visible in the research field. In my view, studies of the professional and personal consequences of whistleblowing should be at the forefront of the whistleblowing research field, and be undertaken on a regular basis including longer-term studies.

Jeff Morris got a gong!

Cynthia Kardell

WHISTLEBLOWER Jeff Morris has been honoured with a medal of the order of Australia in this year’s Australia Day Honours list. It’s an award for a stellar career in whistleblowing, although officially he is being recognised for his services to financial sector accountability and local government. It’s the polite way of not embarrassing those who like to think all is well in the garden even when it is not.



Jeff Morris

I am sure Jeff was more than diligent in local government, but it is his whistleblowing career at the Commonwealth Bank of Australia (CBA) that brought him to national prominence. It began internally in 2008, before he stepped up the pressure on the Australian Security Investment Commission in 2013, which is when he first came to our notice after appearing on the ABC’s 7.30 Report. He appeared before a Senate inquiry and in the Four Corners program “Banking Bad” before team-

ing up with Nationals Senator John “Wacka” Williams and investigative journalist Adele Ferguson to campaign for a full commission of inquiry into misconduct in banking, superannuation and financial institutions.

Suddenly Jeff was everywhere in the media, with Wacka and anyone else willing to listen. Jeff stayed the course, putting his life on hold for years.

But all that work building support across parliament and in the wider community ultimately paid dividends in late 2017. The Nationals threatened to table a private members’ bill co-sponsored by the Nationals, Labor, the Greens and Senate crossbench parties to establish an inquiry answerable to the Parliament. It did the trick, forcing the Turnbull government to commission its own inquiry in mid-December with Kenneth Hayne QC, its sole commissioner. It quickly became compulsory viewing, as we watched the big four banks and others stumble and mumble at the hands of the unforgettably formidable counsel assisting, Rowena Orr QC.

Jeff’s job was done. And what a job it was!

Jeff didn’t appear, but his submission to the Hayne inquiry lays bare his whistleblowing and the personal turmoil he had to bear. Incredibly, he was able to dig deep to help the bank’s victims, who found their way to his door, and to support other whistleblowers along the way.

You can read his story in many, many places now, because he has become the face of banking and financial services reform. But why not go to <https://www.jeffmorris.com.au/> for the story of the man who blew the whistle on the CBA in his own words? It doesn’t disappoint, and I doubt there’s another man about town with a better CV!

Jeff has learnt a thing or two since beginning his whistleblowing career, telling all those “wannabe” whistleblowers out there “not to do it through whistleblower provisions.” “It’s literally like sticking your head above the parapet and inviting somebody to blow it off. It doesn’t work”. He knows from personal experience why “we absolutely need fundamental whistleblower reforms, but [his] level of confidence in the government currently prosecuting

whistleblowers delivering that is pretty low.” (*The Mandarin*, February 2023)

He’s right, of course, and whistleblowers do need their own protection agency. WBA lobbied hard for a Public Information Disclosure Agency or PIDA before the Senate in the early 1990s and we haven’t stopped since.

But full credit where credit’s due. It was WA Greens Senators Jo Vallentine and her successor Christabel Chamarette who got the whistleblowing ball rolling much earlier. Voting out the Keating government in 1996 didn’t help, as the incoming prime minister John Howard simply shrugged it off, saying it wasn’t one of his “core promises.”

We had to wait another 11 years for a Labor government. At the time the Auditor-General Mark Dreyfus said it was what was possible with a minority government, an unforgiving opposition and a fractious crossbench. It might be one reason why it is still failing us.

There has been some movement on the issue in recent times, but I doubt the agency being imagined would do the job. I can’t see it doing more than listing this and that, so we could all know how many of us were in trouble at any one time. Although the government of the day laments the continuing need for reform, no one wants to listen to the people the system is failing, for fear the solution may prove compelling in its simplicity.

That said, Jeff is also right to say that prosecuting whistleblowers David McBride and Richard Boyle is a very bad look for a government that says it ‘knows’ the current act is not doing the job. In other words, it is not even enough for the current A-G to simply weigh up whether the two cases are soundly based on what he “knows” is bad law, when the wider national interest and national security interests are crying out to be heard.

Jeff is the second whistleblower to be recognised in the Australia Day Honours. Bundaberg nurse Toni Hoffman was made Queensland’s ‘Local Hero’ in 2007. Both of them achieved amazing things, when they willingly stepped in to lead the nation when it needed them. We’re deeply indebted to both of them.

We’ve had the pleasure of knowing Jeff since 2014 when he was one of the speakers at our annual conference, and

being able to call him one of our own. Thank you, Jeff.

Cynthia Kardell is president of Whistleblowers Australia.

Misuse of a whistleblower law

Brian Martin

CHARLES BENNETT’S research was having an impact, helping to save lives. Bennett, a US medical researcher, was investigating the side effects of best-selling medicines, finding that some were dangerous. His work led several widely used medicines to be withdrawn or have warnings posted about them. Bennett, working with a team at Northwestern University in Chicago, set up a programme to collect information about side effects. Bennett’s research was so successful and well-recognised that he was awarded government research grants totalling millions of dollars per year.



Charles Bennett

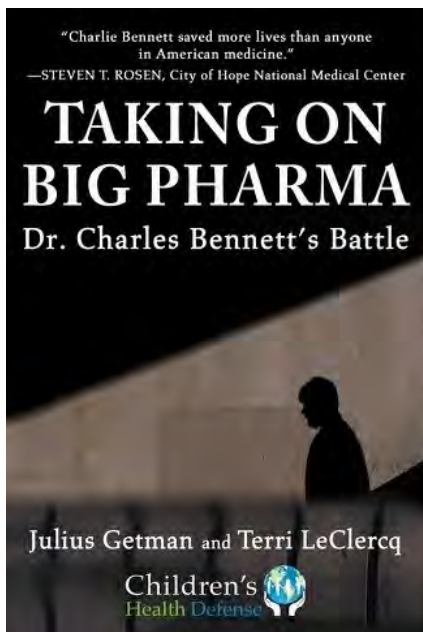
But not everyone was happy with Bennett’s findings. Big pharmaceutical companies can make billions of dollars annually from their top-selling drugs, and exposure of side effects can damage sales and lead to massive fines. Bennett was on the radar of one particular company, Amgen.

Pharmaceutical companies do not like anyone who threatens their profits, so scientists, especially those with medical credibility, are prime targets for reprisals. These scientists do not need to make public criticisms of big pharma. It is enough just to do research that gains publicity or leads to regulatory controls.

Bennett was not a whistleblower in the usual sense, but he was treated just

like a whistleblower. And there's a curious twist. The False Claims Act, used by whistleblowers who expose defrauding of the US government, was used *against* Bennett.

This story is told in a revealing book titled *Taking on Big Pharma: Dr. Charles Bennett's Battle* (Skyhorse Publishing, 2023). The authors are Julius Getman, a retired legal academic, and his wife Terri LeClercq, a retired writing professor. They met Bennett on a cruise, became interested in his story of being persecuted and ended up spending years investigating the saga. Getman was especially well placed for this task, having been president of the American Association of University Professors and having much experience dealing with threats to academic freedom, and so is LeClercq, who is an expert on legal writing.



Pharmaceutical companies have often been the target of legal actions under the False Claims Act (FCA). Companies have doctored their in-house research, ghost-written articles touting their own drugs, hidden adverse effects, downplayed contrary research and continued marketing drugs they know are killing people. If the FCA can be used to recoup money from such corrupt companies, it may do something to restrain the worst behaviour.

How then did the FCA end up being used *against* Bennett, whose research was holding companies to account for promoting dodgy drugs? One of the

workers employed under Bennett's grants, Alice Camancho, initiated the FCA against him, alleging abuse of process and misuse of monies. Much of Getman and LeClercq's book is devoted to a careful analysis of claims and counterclaims.

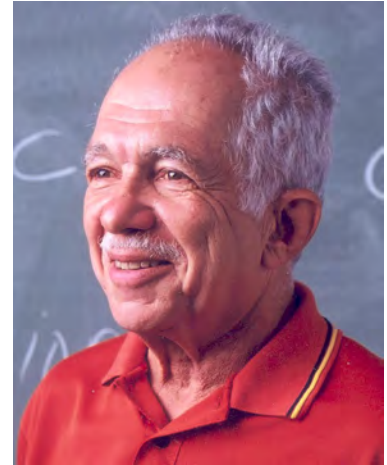
The most damning evidence against Bennett was \$86,000 paid to a fictitious company. All the payments were approved by Bennett, but evidence was soon available that the scam was run by one of his admin assistants, who used the money to pay for her wedding and honeymoon. Bennett, who was focused on scientific matters, not administration, was unaware of the fraud. No evidence was ever provided that Bennett obtained any money illicitly. All that could be proved was that some of the usual accounting rules were not followed. As Getman and LeClercq note, this is not something covered by the FCA, which is about defrauding the government.

Despite the lack of damning evidence, the government persisted with the FCA against Bennett. The story includes many sordid features, including sustained hostility, conflicts of interest and double standards. The pharmaceutical company Amgen, which didn't like Bennett's research, was itself subject to an FCA suit, which it settled for \$760 million. Meanwhile, the government persisted for years with the FCA case against Bennett, although the amounts were piddling by comparison.

Administrators at Northwestern University, Bennett's employer, seemed uninterested in defending him. Instead, Bennett was locked out of his office and forbidden to accept new research grants. After years of harassment, he took a job elsewhere. Northwestern eventually settled the FCA but did not include Bennett in the settlement, leaving him legally vulnerable, and he ended up paying dearly even though he was never proven to have done anything wrong. The government's threat to take him to court was enough to make him settle the case.

Getman and LeClercq: "At every stage of the proceeding, Northwestern's administrators treated Charlie with suspicion and accusation. It started with the department chief's supporting Camacho's claim that Charlie's use of his grant money violated the False Claims Act; was followed by Charlie's

office being locked with no warning and for no significant reason; continued with the limits placed on his legal support and gulag-like conditions attached to his leave. It culminated in an official university statement that continues to besmirch his reputation."



Julius Getman

At one point, an Amgen executive threatened to destroy Bennett's career, and there were other hints of the company playing a role in the prolonged campaign against him but, as Getman and LeClercq say, there is no "smoking gun," no definitive proof that Amgen or another company was behind the campaign.



Terri LeClercq

Perhaps, though, overt company interventions were not needed. In 1971, Matthew Crenson's book *The Unpolitics of Air Pollution* was published. Crenson analysed decision-making by government officials in Gary, Indiana and East Chicago, finding that they served the interests of US Steel, the dominant company in the area. Officials didn't need to be coerced or even

prompted, because their mindset was conditioned by the company's power. Even in the absence of outside pressure, they unthinkingly made decisions serving the company's interests.

Similarly, university officials can serve the interests of big pharma without any external prodding. The imperative to serve industry is a sort of background assumption, a way of thinking that guides policy and practice, and which can lead some university figures to instigate reprisals against dissidents, like Bennett, who threaten the university's cosy relationship with industry. Indeed, it might be said that attacking Bennett proved to industry sponsors that the university was loyal to them.

Getman and LeClercq, when they first began investigating Bennett's case, approached a range of individuals. They were surprised that no one at Northwestern was willing to talk about the case. It is also significant that no one at Northwestern spoke out about the Bennett saga: there were no insiders who blew the whistle. It rested with outsiders — Getman and LeClercq — to expose the sordid story.

For anyone whose work or public commentary threatens a powerful group, there is an important lesson. Laws may be passed to aid whistleblowers, but sometimes these same laws can be turned around and used against those who most need protection. As Getman and LeClercq note, readers of their book may learn that "the highly revered Whistleblower Act of 1989 can be used to destroy individuals who stand in the way of big money and big profits." Publicity remains the most powerful tool against attacks on dissent, but few will have the good fortune of finding persistent investigators like Getman and LeClercq to document and publicise their cases.

Brian Martin is editor of *The Whistle*.

How to be a nonconformist

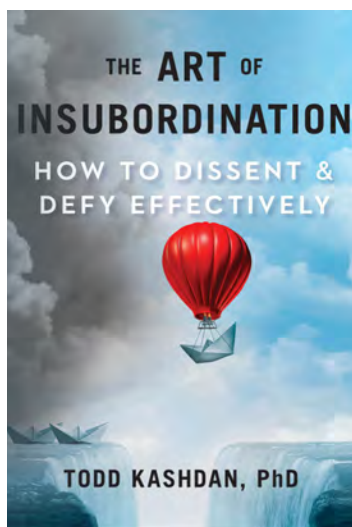
Brian Martin

IMAGINE that you disagree with the dominant view. Let's say you disagree about vaccination: you have some reservations about Covid vaccines, or

about the HPV vaccine. How can you be more effective in getting your view-point across?

Vaccination is pretty controversial. What about religion or politics? Whatever the topic, your view is widely thought to be wrong, even kooky. What's the best way to present it?

For ideas, get a new book, *The art of insubordination: how to dissent & defy effectively*, by Todd Kashdan. It sounds ideal for whistleblowers. It is definitely worth reading, but there are a few twists.



Kashdan is a psychologist and for decades has been committed to learning about principled dissent. Some cases of heroically standing up against the crowd are well known, for example Rosa Parks challenging segregation rules on buses in the US and Edward Snowden exposing government surveillance. The trouble is, most such stories are high-profile, and we don't hear about everyday challenges, especially unsuccessful ones, like when you question vaccination orthodoxy and alienate your friends and family.

Kashdan starts by reviewing the evidence about why people conform. The reality is that only a few people openly question dominant views or practices. In the workplace, it's risky to disagree with the boss. In the classroom, it's hard to challenge the teacher. In a medical practice, it's hard to express reservations about vaccines. What's going on?

An answer is provided by the title of one of Kashdan's chapters: "The strange things we do to be liked." He says people are mentally "wired" to get

along in groups. Conforming is easy psychologically. It feels dangerous or unnatural to upset others by questioning what everyone seems to believe.

Kashdan explains this, but he also explains why it's vitally important for society to tolerate, even to encourage, dissent, because principled dissent is what drives progress towards a better world. This is an optimistic and motivating message, which is needed given how hard it is to make a difference.

On being persuasive

The second major part of the book is titled "The non-conformist's cookbook." It provides practical advice for how to be effective when you're up against the status quo and want to change it. There's lots of valuable information here, but I'll put on my sceptical hat and note that only some of it is helpful for whistleblowers. The general problem is that most whistleblowers didn't set out to be non-conformists. Quite the contrary. They believe in the system so, when they see something going wrong, they trust in authorities to investigate and, fix any problems. The trouble is that they are "conforming" to the system's idealised picture of itself as honest, public-spirited and fair. They are not conforming to the sordid reality of deception, self-interest and bias.

The first chapter in "The non-conformist's cookbook" is on talking persuasively when you're questioning the status quo. This is definitely important. Anyone, whether a conformist or a dissident, can benefit from being able to talk persuasively. So far, so good. Let's look at Kashdan's specific advice. He says to be an insider: people will be more receptive to those in their in-group than to outsiders. Australian government officials are more likely to listen to Australians who question refugee policies than they are to listen to questioners from China or Chile.

But does this apply to whistleblowers? It seems just the opposite: the reaction to insiders is far harsher and more unrelenting than to outsiders. If you want to challenge police corruption, will you be more persuasive operating from the inside or the outside? Most police whistleblowers are treated horribly. They are shunned, sidelined, slandered, physically attacked and even framed for crimes. The sad reality is that few whistleblowers are successful

in reforming the organisations in which they work. Their best chance of success is by combining forces with groups on the outside. This is where Kashdan's advice is relevant. He tells how to "attract people who've got your back." An individual has little chance against a powerful establishment. Joining or creating an opposition group improves the odds.

On surviving psychologically

It can be demoralising to confront powerful opponents, as whistleblowers know too well. Kashdan is well placed to advise on how to "build mental fortitude." He tells of a set of skills known as psychological flexibility that enable you to separate mentally from disturbing feelings, examine them and make decisions with a clearer mind. Nearly everyone can benefit from cultivating psychological flexibility, whether or not you are at risk of trauma. For those few whistleblowers who carefully plan their actions, enhancing psychological flexibility should be part of the preparation. The trouble is that employees who inadvertently blow the whistle didn't set out to be what Kashdan calls insubordinates, and probably never thought about the need to prepare mentally to survive an onslaught.

On a more positive note, let's say you've been campaigning against an oppressive orthodoxy for many years and finally succeed. You've challenged corruption in local government, thrown out a few corrupt operators and been elected on a reform programme. What then? Kashdan says, "win responsibly." He cites examples of dissidents against repressive governments who finally came to power and then turned into tyrants themselves.

However, not many whistleblowers are so successful that they come out on top of their former persecutors. Nevertheless, Kashdan's warning is important. Just because someone has suffered for their beliefs does not mean they are necessarily magnanimous. I think the more common problem is that some people, who've been involved in shady activities or trying to lord it over others, call themselves whistleblowers to gain more credibility.

Valuing insubordination

Part III of *The art of insubordination* is on "harnessing disobedience." Think of

a team in a workplace that needs to perform at its best, coming up with creative ways to do the job or adapt to changing conditions. Kashdan cites many research studies showing that having someone in the team who raises awkward questions or proposes unorthodox courses of action can be valuable. Too often, everyone accepts implicit assumptions about how to do things or just keeps quiet for fear of disagreeing with the boss or appearing foolish.

In seeking to harness disobedience, Kashdan is speaking not to dissidents but to everyone else, suggesting ways to tolerate, cultivate and benefit from their input. This can be thought of as transforming organisations so they are more supportive of diversity in thought. This is what some whistleblower advocates — including me — say is most needed: changing organisational cultures so raising questions is routine, and people who ask uncomfortable questions are valued rather than attacked. In such cultures, the very word "whistleblowing" would no longer be needed, because speaking out would be just a normal, unexceptional occurrence. It sounds wonderful, but how to bring about change in this direction receives little attention compared to the incessant rhetoric about protecting whistleblowers from reprisals. Protection is important, but it is inevitably less than ideal because it means speaking out is risky.

Kashdan's focus is on psychology, on ways to change your thinking so you become less automatically intolerant of dissent. Having talked to a great many dissidents over the years, I'm always surprised how many of them are critical of *other* dissidents. This doesn't mean we should endorse the views of every dissident. Just hear them out, not reject them out of hand.

The psychological level is important, but for many issues the driving forces are political and economic. Think of tobacco company executives, arms manufacturers and fossil fuel companies. In these cases, persuasion has a limited capacity because of vested interests. Power and money have an enormous influence on what people think, so often it is necessary to organise collectively to challenge wealthy and powerful groups.

Decades ago, anti-smoking campaigners were the dissidents, challenging a wealthy industry. Would Kashdan's advice have helped the campaigners? Perhaps to some extent, but it wouldn't be enough on its own. Even now, the tobacco industry continues to find new ways to continue in old markets and expand in new ones. All health authorities recommend against smoking, so being against the industry is no longer dissent. In a sense, the industry has become the dissenter.

This raises a point that Kashdan does not discuss in depth. He says that dissent is needed to promote causes that lead to social progress, initiated from anywhere on the political spectrum. But it's not always easy to determine what is progressive. Covid raises many questions and challenges concerning lockdowns, masks, distancing and vaccines. What exactly is progressive? Is it important to defend dissent against the value of lockdowns or Covid vaccines?

Whistleblowers can learn a lot from *The art of insubordination*. Even better would be to spread the book's ideas to everyone else, the non-dissenters, so they are more supportive of insubordination. That's an enormous task.



Todd Kashdan

Kashdan's final chapter is "Raising insubordinate kids." It contains lots of suggestions and includes this "big idea": "Perhaps the most profound way to breed principled rebels is the simplest. You and I must lead by example, becoming more rebellious ourselves and more solicitous of others' insubordination."

Robo-debt is not the exception. It's the norm.

Cynthia Kardell

WITNESS K, Bernard Collaery, David McBride and Richard Boyle have at least one thing in common. When they realized their employer was in on the cover-up, they took it up the chain of command through the media to the people. The system they had been relying on to investigate their claims — of banking fraud, state-sponsored treachery, the murder of civilians in Afghanistan and theft on a national scale — was being deliberately abused to obstruct, denigrate, and punish them for trying to force the government's hand. The government didn't want people thinking it could be pushed into dealing with its dirty secrets in a public way. The government wanted to remain the sole arbiter of what lies in our, the people's, national interest and it was willing to use its power and our resources to do it.

In fact, most of the whistleblowers who contact me have been caught up in the internal whistleblowing or public interest disclosure (PID) system. Caught up by people who won't even acknowledge receipt of a disclosure. They're careful not to give you any certainty or the opportunity to rely on it somewhere down the track. Most seem to know instinctively, how to delay and frustrate a PID for reasons that aren't immediately obvious. Maybe they just resent what they see as a criticism of them, as some can take it very personally. They don't like you or their friend doesn't. You're an oddball, not one of them. No one likes you. And you think you're better than them. Why else would you call it out when you know we're all doing the same thing? And everyone knows the boss thinks you're on the nose. But then, maybe there's more to this than meets the eye.

This is why I've been fascinated by the evidence coming out of the commission of inquiry into the robo-debt scandal. Fascinated, because what we were hearing was straight out of a Ricky Gervais spoof but harrowing and very real in equal measure. Even those who took their own lives after receiving a debt notice were used as a media opportunity by the minister to silence his critics. But robo-debt is not an

exception, although it is a masterclass in what whistleblowers are routinely faced with, each time they put their hand up to say, hang on that's not right.



By the end of the inquiry, we knew that in 2014 Kathryn Campbell, the Secretary of the Department of Human Services (DHS), suggested the government consider using the automated system we now know as robo-debt. Campbell didn't know whether it was lawful to rely on a debt calculated by matching actual income earned each fortnight with an average, calculated by reference to the Australian Tax Office's annual income tax records. It wasn't, but she didn't "turn her mind to it" because the minister, Scott Morrison, was very very keen and she was eager to please. So, they both pushed ahead, not wanting to know. Later, both Campbell and Morrison claimed the other should have known or known to ask. In turn, former prime minister Malcolm Turnbull and ministers Alan Tudge and Stuart Robert also knew not to ask. They all said they'd have acted differently had they known it was unlawful.

When independent legal advice was sought in 2015 it remained a draft, because it wasn't what they wanted to hear. That meant, in this very Ricky Gervais sort of world, that the "draft" advice could be ignored because it was only a draft. So, the automated system could be implemented with everyone from the minister down hiding from reality. From this point on everyone in on the con across the system would hold the line, no matter how desperate things got for some out there in the real world. Those on the front line were simply pressured to fall into line. They knew the boss and the minister didn't want anything getting in the way, because the government expected to make a killing. We heard how everyone knew not to commit bad news to writing, with the classic wink, wink, nudge, nudge very much in demand.

The legal officers even clubbed together to deceive the Ombudsman's

Office about what they knew about the system's legality. It was the elephant in the room that everyone from the prime minister down studiously ignored, while fully appreciating they would have to ride out any reputational damage if they kept it going. The acting ombudsman later claimed he'd have done something different had he known too, but at the time he preferred to believe what he was told. But more on that later.

I found it both awful and fascinating to watch the commissioner and counsel assisting searching for the words to capture what they were hearing, as witness after witness played with their incredulity, as if they were the ones who just didn't get it. We've seen a lot of that, with ministers dismissing any suggestion it was in any way out of the ordinary. I think we don't like to think we're being conned. We don't like calling them out. We like to think people who we think are like us can be believed, even when it's clear they can't (be believed). It's when believing avoids knowing you're being taken for a fool.



The inquiry heard how PIDs from whistleblowers like Colleen Taylor were carefully placed on file and simply ignored. So, what's new I hear you ask? Well, nothing. The Third Reich was brilliant at keeping records too. Colleen only learnt about it when counsel assisting the inquiry raised it.

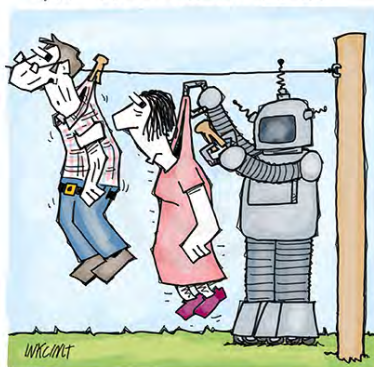
Those who contacted me were also ignored, but as they continued to check the debt calculations manually in the old-fashioned way, they were duly punished for — get this — resisting a reasonable direction and taking too long.

Over time the news coming out of the media pushed home the fact that the PID system was being deliberately abused to obstruct, denigrate, and punish them for doing what it called upon them to do. Like Colleen Taylor, they understood why robo-debt was unlawful, which is why they continued

to resist until they were eased out the door. But they were shocked and dismayed by colleagues gleefully competing to see how many they could do over in the shortest time. Clearly, for some, it was more than just about keeping their job, when they started taking their cues from the minister for whom nothing was beyond the pale.

The awful thing is, the PID system has been designed to reliably deliver this outcome every time, because at the end of the day it's the government or a willing delegate who gets to decide, in secret, whether a PID is to be investigated or buried. Like Campbell, Morrison and their willing helpers did here. There is no sense of there being any conflict of interest. Or any meaningful appeal process, other than to risk all by taking it to the media. The PID system, on its terms, operates only to control what whistleblowers can do, with regular choke points that allow employers every opportunity and whistleblowers none.

THE ROBO-DEBT SYSTEM DIDN'T
'LET DOWN' AUSTRALIANS...



... IT JUST HUNG THEM OUT TO DRY

I think there's a fundamental problem with the thinking that underpins whistleblowing systems, and I don't think it's a mistake. It's about maintaining authority in the face of insubordination, by limiting the investigation of all PIDs to the more serious of claims, with an investigation being used to set standards that are imposed from the top. Less serious claims are collected and collated primarily as part of an ongoing risk assessment strategy, to identify any policy change that might avoid similar claims in the future. In other words, PIDs are destined to be filed, ever so carefully.

One of the fundamental ideas underpinning this rationale is that funding can't be open-ended, that it is better

spent rectifying the more egregious forms of wrongdoing. It wrongly assumes integrity is built from the top down, through the imposition of rules and standards, and that the lower ranks need to be managed by those better able to make the "tough" decisions, when the PID potentially implicates them in the wrongdoing. It's a system that confers a certain privilege on middle and senior ranks and, by its design, reinforces cultural ideas about class across the divide. It assumes that most wrongdoings arises from those without the education and moral authority to lead by example whereas managers are especially well qualified for the task of managing their subordinates. The bias operates across agencies, corporates, and politicians.

Framing a system in this way keeps existing classist ideas and controlling power intact and in the hands of the government and its willing helpers. I am using *classist* here to capture what lies at the heart of patriarchy and hierarchy. This has meant that most of the serious wrongdoing has gone unchecked, until it impacts those with *something to lose if it is investigated*. Then, the choice is as clear as night and day. The whistleblower is deliberately embroiled in the politics and the cover-up begins.

Handling internal PIDs can be done differently and, dare I say it, more efficiently and cost-effectively if it is a flatter, more democratic process where simple problems can be raised openly, and well before they begin to look like incompetence and/or wrongdoing. In this way, everyone owns the problem and its solution. The other more serious PIDs would warrant a more conventional approach, but either way they should be managed by an internal investigative body, established to be legally independent of management in all the decisions it takes. One where whistleblowers can remain generally anonymous if they so choose, while working directly with the investigative unit. So, the question of whether a disclosure counts as a PID would cease to be the means by which delegates withhold acknowledgment to obstruct and control the whistleblowing-generated investigations.

The bias that I describe is never more obvious than in the relationship between many an organisation and the

external investigative body. The latter invariably decides to take the organisation's assessment at face value, by referring it back to the organisation to finalise, which allows the investigative body to stay within budget. It is unwilling to contemplate whether the organisation did the wrong thing. It prefers to live in hope that they are like them — the good guys! Just as the acting Deputy Ombudsman did in rejecting a whistleblower's claim that the robo-debt system was unlawful. In evidence he said he preferred to believe the organisation rather than allocate funds for an investigation. In my observation, it happens more often than not.

It's the same incredible incompetence and bias that retired judge Walter Sofronoff SC identified in his investigation into the Queensland Health Forensic and Scientific Services facility last year. He found a laboratory manager had decided not to test DNA samples below a certain threshold in 2018 to save money, because her funding had been cut. When the manager claimed the whistleblower was out to get her, her boss took her at her word despite knowing that she did not understand what she was being told: that not testing DNA below a certain threshold would cast doubt over potentially thousands of criminal cases. With there being no prospect of an investigation, the laboratory descended into chaos, with claims and counterclaims of bullying and vendettas between staff and managers, with the politics seen as the problem, until the whistleblower went to the press.

The manager's opposite number in the Queensland Police also waved the policy through, knowing he too didn't know what he was agreeing to.

Robo-debt is not an exception, it's the norm. I said at the outset, Witness K, Bernard Collaery, David McBride and Richard Boyle all have at least one thing in common. They each knew why the former government couldn't be trusted to serve the people's interests. Why? Because like robo-debt, politicians and managers throughout the system were busy serving their own interests. This is why we badly need a PID system that denies the government of the day the opportunity to use its power and our resources to do that.

Whistleblowers need their own agency, says Jeff Morris

Anna Macdonald
The Mandarin, 1 February 2023

UPON the release of Transparency International's Corruption Perceptions Index 2022, one former whistleblower says that protections for those who expose corruption are deficient.

Jeff Morris paints a grim picture for any person thinking of blowing the whistle: it'll ruin your life.

"Take it from me, the retaliation is absolutely massive," Morris told *The Mandarin*.

"You will never work again in your chosen career, you'll be driven out of the industry, as I was and as every other whistleblower has been."



Jeff Morris

He added that many whistleblowers suffer personal costs, not just professional ones.

"Most whistleblowers wind up with a diagnosis of PTSD, as I was. Most whistleblowers who have a family lose the family, as I did temporarily," Morrison said to *The Mandarin* after being named a Member of the Order of Australia (OAM).

When he worked for the Commonwealth Bank of Australia, Morris blew the whistle on "unbelievable practices" going on in the financial planning division.

Morris anonymously sent information about his concerns to the Australian Securities and Investment Commission (ASIC) in 2008.

"[ASIC] had allowed the whole sector to run out of control.

"I became aware of it because I reported what was going to ASIC and they did nothing," Morris said.

A frustrated Morris then took his concerns to the media. The article on ASIC's inaction was published in 2013 by Nine's (then Fairfax's) Adele Ferguson.

Morris did not initially plan to go outside the established complaints channel — he wanted to go within the system but felt frustrated at a lack of response.

Media coverage led to a senate inquiry into ASIC, and then came the banking royal commission.

The impact that blowing the whistle has had on his personal life and on others in the whistleblowing community is why he advocates for the creation of a separate whistleblowing-protection agency.

"[The agency] needs to have the power to protect whistleblowers against retaliation," Morris said.

The whistleblower added there should be financial compensation, given how exposing corruption had ruined his and others' job prospects.

The change of government, with a National Anti-Corruption Commission (NACC) pending and the Public Interest Disclosure Act (PID) review, has not impressed Morris thus far.

"[The NACC's] Terms of Reference have been scandalously restricted, there's no catch-all provision for misconduct.

"I think it should cover all public and private sector corruption," Morris said.

Specifically, Morris called out attorney-general Mark Dreyfus' continued prosecutions of whistleblowers David McBride of Defence and Richard Boyle of the ATO.

With all the hassle, pain, and cost of blowing the whistle, why someone would decide to follow in Morris' footsteps is straightforward.

"It's not actually a choice," he said.

"It wasn't for me, it wasn't a matter of weighing up the pros and cons.

"I was certainly aware of them. I was aware of the likely consequences."

With potential whistleblowers approaching him, Morris estimates only two out of 100 would-be whistleblow-

ers then go through with it after he tells them of the personal cost.

His advice for any wishing to expose corruption is, firstly, to be aware of the cost. Secondly, he advises sending documents to journalists anonymously.

"Don't try and do it through whistleblower provisions," Morris said.

"It's literally like sticking your head above the parapet and inviting somebody to blow it off. It doesn't work.

"That's why we absolutely need fundamental whistleblower reforms, but my level of confidence in the government currently prosecuting whistleblowers delivering that is pretty low."

Commonwealth spends more than \$7.6 million in prosecuting whistleblowers

Matthew Doran
ABC, 14 February 2023

THE COMMONWEALTH has racked up more than \$7.6 million in legal fees pursuing whistleblowers, with the bulk of that bill relating to a now-dumped prosecution.

Officials from the Attorney-General's Department revealed the cost under questioning from New South Wales Greens senator David Shoebri-bridge, who labelled it as a "lavish use of taxpayer funds".

In July last year, Federal Attorney-General Mark Dreyfus ordered prosecutors to drop the case against Canberra lawyer Bernard Collaery.



Bernard Collaery

Mr Collaery had been charged with helping his client, an ex-spy known by the pseudonym "Witness K" with

revealing classified details of a secret mission in Timor Leste.

The Attorney-General's Department confirmed that by the end of January, the case against Mr Collaery and Witness K had cost the Commonwealth \$5,510,829.

Senator Shoebridge also sought details of prosecutions against David McBride and Richard Boyle.

Mr McBride is being prosecuted for allegedly leaking top-secret defence information to the ABC, while Mr Boyle is before the courts after lifting the lid on unethical debt recovery practices within the Australian Taxation Office.

Officials revealed the cost of the McBride prosecution had reached \$1,875,348, while Mr Boyle's case had reached \$233,171.

The Commonwealth's spending in Mr McBride's case was higher, according to Attorney-General's Department officials, because of the extra work needed to protect national security information.



Richard Boyle

Senator Shoebridge described it as using taxpayer funds for “monsterring whistleblowers.”

“Is there some point at which ... your department reviews the lavish use of public money to jail a whistleblower,” he asked.

“I'm not sure I would agree with your characterisation of lavish, it's a significant amount of money,” Attorney-General Department Secretary Katherine Jones responded.

The Department's deputy secretary, Sarah Chidgey, noted it was up to the Commonwealth Director of Public Prosecutions, as an independent

agency, to decide whether to continue pursuing the two men.

“They continue over time to have regard to the prosecution policy of the Commonwealth, and whether it continues to be satisfied — and that includes consideration of the public interest,” Ms Chidgey said.

The federal government has been criticised for pursuing Mr McBride and Mr Boyle by whistleblowing advocates, particularly as it reviews Commonwealth whistleblowing protections.

Whistleblowers need protection

Kieran Pender

Saturday Paper, 18 March 2023

WHISTLEBLOWERS are vital actors in our democracy, upholding our right to know. Without them — and the public interest journalism they make possible — corruption and human rights abuses go unaddressed. In recent weeks, Senator David Pocock and members of parliament Zoe Daniel and Andrew Wilkie have all given voice to whistleblowers.

Pocock highlighted that an oil spill at a Santos facility in Western Australia had killed dolphins, and that the gas giant covered it up. Daniel told parliament that she had been contacted by whistleblowers working at a youth detention centre in Victoria, where children were allegedly being kept in solitary confinement for up to 22 hours a day.



Zoe Daniel

And last week Wilkie, a former whistleblower himself, tabled reams of documents that he said showed fraud and other unlawful conduct at mega-church Hillsong.

Pocock, Daniel and Wilkie were able to make these disturbing claims public because they and their sources were protected by parliamentary privilege, a doctrine dating back centuries that protects the proceedings of parliament. Immediately the disclosures sparked calls for accountability — Santos has commissioned an independent investigation into “Dolphingate”; the charities regulator has said it is investigating Hillsong.

Without whistleblowers, and willing crossbenchers, we might never have heard these allegations of environmental wrongdoing, mistreatment of children or money laundering by a charity.

But whistleblowers shouldn't have to turn to politicians for accountability when they witness suspected wrongdoing. Parliamentary privilege should be a safeguard of last resort. Whistleblowers should instead be empowered to make public interest disclosures under strong laws that protect them from losing their jobs or being sued for speaking up. Unfortunately, our laws offer little such protection.

Even when whistleblowers turn to politicians, they do so cautiously. Daniel spoke about the “concerns about retaliation” among the whistleblowers who came to her. Troy Stolz, who blew the whistle on potential unlawful conduct at clubs and pubs, was sued by ClubsNSW for giving documents to Wilkie (and the media) — his case only recently settled, after years of stress and hundreds of thousands of dollars in legal fees, and following the intervention of parliament's privileges committee.

How many whistleblowers are not coming forward? What wrongdoing remains in the shadows because our laws are not serving us? The crossbench can give voice to only so many. Without robust reform and new institutional structures, Australia's whistleblowers will continue to be punished rather than protected. When we fail to empower these courageous truth-tellers, our democracy suffers. When whistleblowers stay silent in the face of wrongdoing, we all suffer.

Another recent story only underscores the importance of whistleblow-

ing: the robo-debt royal commission. If more public servants had felt protected and empowered to speak up, or those in positions of authority had listened to the few brave staff who did object to the unlawful scheme, taxpayers may have been saved more than a billion dollars. More importantly, a number of suicides and the distress of thousands of people may have been prevented. There would be no need for a royal commission had robo-debt been stopped when the alarm bells first rang; we prevent the next robo-debt by helping people speak up and listening when they do.

The good news is that reform is on the horizon. The first tranche of amendments to federal public sector whistleblowing law, the Public Interest Disclosure Act (PID Act), is currently before parliament; a senate committee inquiry into the bill was published this week. It should pass with minor tweaks in the weeks or months ahead.

In 2019, a Federal Court judge blasted the PID Act as “technical, obtuse and intractable.” That needs to change. The bill is a good start — but not much more than that.

For Attorney-General Mark Dreyfus, who oversaw the enactment of the PID Act in 2013, the hard work now begins. We need more ambitious, sweeping reform to bring the PID Act in line with international best practice.

The new laws need several features to be a success: a “no wrong doors” model that helps whistleblowers no matter where they turn, or which point of entry they attempt in telling the truth; stronger protections and accessible remedies for whistleblowers who face retaliation; an enforceable positive duty on government agencies to protect whistleblowers; clearer channels for lawfully blowing the whistle to the media; and greater practical support for whistleblowers.

PID Act reform should be made in lock step with changes to the private sector whistleblowing scheme in the Corporations Act. This covers the vast majority of Australian workers — including anyone who works for a company. These protections are better than the PID Act, and they were last updated in 2019. But a major reason for Australia’s frail, inconsistent whistleblower protections framework is that reform efforts have treated each scheme in isolation, despite significant overlap.

It would be far better to fix all federal whistleblower laws at once, and bring all private, non-profit and union sector protections into a single scheme. Consistency and uniformity should be key objectives.

Institutional innovation is essential. At the moment, Australia’s whistleblowers lack any centralised avenue for support. If you witnessed wrongdoing at work, where would you turn? There are few lawyers who specialise in the area (although at the Human Rights Law Centre, we are in the process of establishing a dedicated legal service for whistleblowers). Victims of wage theft or workplace exploitation can go to the Fair Work Ombudsman; the Australian Human Rights Commission and a number of specialised services support those who have been sexually harassed at work. For now, whistleblowers have no one in their corner.

That can be fixed with the establishment of a whistleblower protection authority. Such a body was a central aspect of the crossbench’s legislation to establish a federal anti-corruption commission. But despite Dreyfus’s promise that the National Anti-Corruption Commission (NACC) would be extremely similar to the crossbench design, a whistleblower body was not included in the legislation that passed parliament in November. The government has instead promised a discussion paper on the need for a whistleblower authority — even though it committed to such a body before the 2019 election.

I have recently been in the United States, meeting with two equivalent American bodies. The US Office of Special Counsel is a centralised hub for public sector whistleblowers; it oversees agencies as they investigate wrongdoing alleged by whistleblowers, investigates allegations of reprisals against whistleblowers and takes enforcement action, manages alternative dispute resolution for whistleblower complaints and intervenes in important whistleblower cases. We need an Australian equivalent, ideally one that also has jurisdiction over the private sector (in the US this function is split across several regulators).

I also met with the Office of Whistleblower Ombuds in the house of representatives, an independent body that helps congresspeople and committees in their dealings with whistleblow-

ers. Given the important role played by MPs and senators in giving voice to Australian whistleblowers, an equivalent in Australia would add vital institutional support.

Through a combination of ambitious law reform and innovative institutional changes, the unfulfilled promise of Australia’s whistleblower framework can become reality.

Unfortunately, Labor has continued to oversee the prosecution of whistleblowers that began under the Coalition. Despite ending the prosecution of Bernard Collaery, Labor continues to oversee cases against tax office whistleblower Richard Boyle and defence whistleblower David McBride.



David McBride

These cases are entirely contrary to the public interest. Boyle spoke up about unethical debt recovery practices at the tax office; McBride blew the whistle on alleged war crimes committed by Australian forces in Afghanistan. Each thought they were doing the right thing, speaking up internally, then to oversight bodies, and only to the media as a last resort. They should be protected by the PID Act; instead, they are on trial.

Dreyfus could end these cases with the stroke of a pen.



Boyle is awaiting judgement in his defence under the PID Act; if he loses, he will face trial in October. McBride’s PID Act defence was withdrawn at the last moment after an extraordinary

national security intervention by the government. He will face trial later this year. McBride remains the only person charged to date in relation to the war crimes allegedly committed by Australian forces in Afghanistan. Not the perpetrators, but the truth-teller.

If Boyle or McBride are ultimately found guilty, and imprisoned, it will be on Labor's watch. These cases send a chilling message to other whistleblowers about the risks of speaking up. They undermine the otherwise good work being done by this government.

Prosecutions aside, the Albanese government's commitment to substantial whistleblower reform is admirable. Dreyfus has a strong track record, dating all the way back to his time as a backbencher chairing the committee that recommended the PID Act. But words are only the start. In the months ahead, all Australians need to see concrete action on whistleblower reform. We need ambition to truly protect and empower those who speak up about wrongdoing, and ensure their calls are heeded.

The commencement of the National Anti-Corruption Commission in the months ahead will be a landmark moment for accountability in Australia, but the NACC will be ineffective without whistleblowers. If those who witness corruption do not feel confident to speak up, how will the NACC do its job?

With ambitious reform and the establishment of a protection authority, 2023 could be the year of the whistleblower. That would be a fitting tribute to the courage shown by these brave Australians.

Kieran Pender is a journalist and a senior lawyer at the Human Rights Law Centre.

The (un)heroic journey of a whistleblower

Gemma-Maé Hartley

The Daily Maverick, 7 March 2023

WHISTLEBLOWERS often face severe consequences for acting in the public interest: retaliation from their employers (including termination of employment, ostracisation, relentless legal action), financial strain and, in acute

cases, even physical harm or death. On top of that, some whistleblowers may also face public scrutiny and scepticism and are portrayed as "snitches" and traitors, while others may live in obscurity and struggle to have their stories heard.

Reports on the public and private resources whistleblowers have safeguarded are extensive and whistleblowers play an essential role in democracies by ensuring accountability and transparency. Yet, despite these real outcomes, the journey of a whistleblower is often far from heroic.

Indeed, many whistleblowers become known to the public not so much for their fight against corruption, or for the promotion of responsibility, integrity and accountability, but for the tragic personal consequences they suffer. In South Africa, we are frightfully familiar with this hard truth.

Today, State Capture whistleblowers are rightfully celebrated as heroic individuals who acted in the name of justice and the public good at significant personal risk. We can say a great deal about the personal sacrifices made by these whistleblowers and, on account of these sacrifices, that few people would have done the same. It takes immense courage to blow the whistle.



The Platform to Protect Whistleblowers in Africa (PPLAAF) supports whistleblowers who risk their livelihoods for the public interest. One such whistleblower is Maria*, who — in order to protect herself from further harm — has chosen to remain anonymous. Maria is a 60-year-old single mother and, in 2014, she blew the whistle on a South African State-Owned Enterprise. Maria was concerned about the actions of the then-CEO's approval

of irregular salary adjustments. Her reports on the matter were met with disregard and her refusal to remain silent led to her suspension. She faced a disciplinary hearing on 48 spurious charges, which Maria describes as a "witch-hunt." Ultimately, her contract was terminated and for almost ten years now, she has borne the brunt of blowing the whistle.

Maria did not know about the various legal mechanisms in place to protect whistleblowers. She referred the unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) but her employer managed to have the matter postponed numerous times. Maria was under the impression that a settlement would be reached, however, by the time the matter concluded in 2019, her contract had expired, and the CCMA confirmed her dismissal. Maria's case clearly demonstrates the need for continued and relentless awareness-raising on whistleblower legislation.

In the aftermath of her dismissal, Maria's professional life was "lonely" as her colleagues were told not to speak to her. She was seen as a "person who could not be trusted." Maria now avoids social gatherings altogether, explaining that "once you say you are a whistleblower, people tend to be careful and uncomfortable in your presence."

Maria also lost her financial security after her contract was terminated; the effects were dire for her and her family. "They will make sure that they will break you financially," Maria told PPLAAF. Initially, Maria was informed of her termination while recovering from an operation in hospital. Subsequently, her medical aid was terminated and she could not afford post-operation check-ups.

As a single mother, Maria's journey as a whistleblower caused havoc for her family. It impacted her relationship with her two children who had their lives suddenly and permanently changed. Maria could no longer afford to provide them with the same life they had before. Maria's daughter, who had been studying at the University of Pretoria, had to halt her studies and return home because Maria could no longer afford her fees.

Maria had to cover her legal costs using her pension fund which, today, stands almost entirely depleted. Maria

has struggled to rebuild this fund since, particularly because her reputation as a whistleblower precedes her in any employment opportunity. Now, at 60, Maria can only hope that she can work long enough to support herself and her family.

“You either give up or you fight, and hence I had to fight.”

When asked if she would do it again, Maria struggled to respond. After some consideration, she stated that “it is more about the moral issue,” and that she could not stand by and remain silent. One thing Maria would change is that she would blow the whistle in a safer way by seeking help and support — such as that offered by PPLAAF — at an earlier stage. PPLAAF is there to advise potential whistleblowers on how to blow the whistle thoughtfully, safely, and strategically.

Maria hopes that her case, like many others, promotes the message that “you can still be ethical in a world of corruption.”

While facing a difficult and uncertain future, some whistleblowers have made a significant impact on the public sphere and others have not. Maria’s story is sadly not uncommon, and it deserves to be told. As it stands, the system for protection is largely unresponsive. For whistleblowers like Maria, the heroic act of speaking out inevitably leads to a journey that is far from heroic. It is then essential to acknowledge and support *all* whistleblowers, not only for their bravery, but for their contributions to transparency, accountability, and justice.

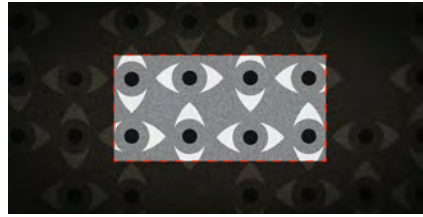
PPLAAF is a non-governmental organisation established in 2017 to protect whistleblowers, as well as to advocate for better whistleblower protection and to engage in strategic litigation on whistleblowers’ behalf when their revelations deal with the general interests of African citizens. For more information on PPLAAF, please visit www.pplaaf.org

Gemma-Maé Hartley is Regional Project Officer, PPLAAF Southern Africa.

Whistleblowers take note: don’t trust cropping tools

Nikita Mazurov

The Intercept, 14 February 2023



AN ICONIC SCENE from the sci-fi comedy series “Red Dwarf” meant to parody the absurdist fetishization of image forensics — in which TV and movie characters are able to perform seemingly magical image enhancements — contains one crucial kernel of truth: It is, in fact, possible to uncrop images and documents across a variety of work-related computer apps. Among the suites that include the ability are Google Workspace, Microsoft Office, and Adobe Acrobat.



Uncropping Abbey Road from the Beatles

Being able to uncrop images and documents poses risks for sources who may be under the impression that cropped materials don’t contain the original uncropped content.

One of the hazards lies in the fact that, for some of the programs, downstream crop reversals are possible for viewers or readers of the document, not just the file’s creators or editors. Official instruction manuals, help pages, and promotional materials may mention that cropping is reversible, but this documentation at times fails to note that these operations are reversible by any viewers of a given image or document.

For instance, while Google’s help page mentions that a cropped image may be reset to its original form, the instructions are addressed to the document owner. “If you want to undo the changes you’ve made to your photo,” the help page says, “reset an image back to its original photo.” The page doesn’t

specify that if a reader is viewing a Google Doc someone else created and wants to undo the changes the editor made to a photo, the reader, too, can reset the image without having edit permissions for the document.

For users with viewer-only access permissions, right-clicking on an image doesn’t yield the option to “reset image.” In this situation, however, all one has to do is right-click on the image, select copy, and then paste the image into a new Google Doc. Right-clicking the pasted image in the new document will allow the reader to select “reset image.” (I’ve put together an example to show how the crop reversal works in this case.)

An original uncropped image in a Google Doc can also be viewed by downloading a “web page (.html, zipped)” version of the document. The uncropped image will then be in the downloaded images folder.

Enterprising users have even written code that makes it easy to see uncropped images. On places like GitHub, they post scripts that can be loaded into web browsers to display uncropped images by default in any viewable Google Doc.



While Microsoft Office, like Google, allows for cropping images, the instructions take care to note that the full images might be preserved: “Cropped parts of the picture are not removed from the file, and can potentially be seen by others.” The instructions provide additional directions for deleting the cropped portions of the image in the apps.

Uncropped versions of images can be preserved not just in Office apps, but also in a file’s own metadata. A photograph taken with a modern digital camera contains all types of metadata. Many image files record text-based metadata such as the camera make and model or the GPS coordinates at which the image was captured. Some photos

also include binary data such as a thumbnail version of the original photo that may persist in the file's metadata even after the photo has been edited in an image editor.

Images and photos are not the only digital files susceptible to uncropping: Some digital documents may also be uncropped. While Adobe Acrobat has a page-cropping tool, the instructions point out that "information is merely hidden, not discarded." By manually setting the margins to zero, it is possible to restore previously cropped areas in a PDF file.

The key takeaway for would-be whistleblowers, leakers, and journalists working with sensitive sources is to never trust the cropping functionality afforded by professional-level apps and other document and image manipulation software and services. It is always prudent to assume that a cropping operation is nondestructive — the original is maintained — or reversible.

Images and documents should be thoroughly stripped of metadata using tools such as ExifTool and Dangerzone. Additionally, sensitive materials should not be edited through online tools, as the potential always exists for original copies of the uploaded materials to be preserved and revealed.



When dealing with especially sensitive materials that require cropping, resorting to the tried-and-true analog method of using scissors may be the safest approach.



Investigative techniques of a famous New Zealand whistleblower

Nicky Hager
Stuff, 1 January 2023



Owen Wilkes

WHISTLEBLOWER Owen Wilkes was a tireless and formidable researcher for peace and disarmament. Before the Internet, he combed publicly available sources on weapons systems and defence strategy. In 1968, he revealed the secretive military function of a proposed satellite tracking station in the South Island, and while working in Sweden he was charged with espionage and deported after photographing intriguing but publicly visible installations. In a new book about his life, *Peacemonger*, edited by May Bass and Mark Derby, Nicky Hager writes about Wilkes' research techniques.

Owen Wilkes was an outstanding researcher, a role model of how someone can make a difference in the world by good research. But how did he actually do it? Owen managed to study complex subjects such as Cold War communications systems, secret intelligence facilities and foreign military activities in the Pacific.

There are many important and useful lessons we can learn from how he did this work. The world needs more public interest researchers, on militarism and other subjects. Owen's self-taught research techniques are like a masterclass in how it is done.

Lots of information isn't secret, just hard to find

Owen worked for many years, sitting at his large desk at the peace movement office in Wellington, researching the military communications systems set up to launch and fight nuclear war. How was this possible?

We are a bit conditioned currently to imagine the only option would be leaked documents from a whistleblower. The first secret of Owen's success is that he had learned that large amounts of information on these subjects can be found and pieced together from obscure but publicly available sources. The heart of his research method was long hours spent poring over US government records and military industry magazines, gathering the precious crumbs of detail like someone panning for gold.

Behind the large desk were shelves and shelves of open-topped file boxes, each with a cryptic title. These boxes were full of photocopied documents and handwritten notes from his researching. This may all sound very pre-Internet; indeed it was largely pre-digital.



Owen Wilkes speaking at a protest at the US base at Christchurch Airport (Harewood), 1973. Owen is wearing a Halt All Racist Tours (HART) badge. The Harewood demonstration was a key event in the later government decision to cancel a proposed Springbok tour in New Zealand.

But what Owen was doing would today be called "open source" research and his work is far superior to that carried out by many people with Google and other digital tools at their fingertips. Probably his favourite source of all was a publicly available US defence magazine called *Aviation Week and Space Technology*. The magazine (now online) is written for military staff and arms manufacturers, keeping them informed about developments in weapons, aircraft and "C3I" systems, which stands for Command, Communications and Intelligence systems: one of Owen's main areas of speciality.

The magazine also covered Owen's speciality of "space based" military systems, such as military communication and surveillance satellites. In Owen's files, which can be viewed at the

National Library in Wellington, *Aviation Week and Space Technology* appears often. In a file box called USA Space Systems is a clipping from 1983 about the US Air Force awarding a contract for a ballistic missile early warning system (nuclear war-fighting equipment). The article revealed that the early warning system would be based at air force bases in Alaska, Greenland and Fylingdales, England — three clues about US foreign military activities.

By reading and storing away details from numerous such articles, spanning many years, Owen built up a more and more detailed understanding of military and intelligence systems.

The other endlessly useful source Owen used was US Congress and Senate hearings and reports about the US military budget. This is where each year the US military spells out its military construction plans, new weapons, technology programmes and the rest, often with figures broken down to the level of individual countries and military bases. Senior military officials appear at hearings to explain the threats and strategies that justify the spending. As with the military magazines, Owen systematically mined these reports year after year for interesting detail.

He was especially keen on the US Congress' Committee on Appropriations, Subcommittee on Military Construction Appropriations. His files on US antisatellite weapons, for instance, contain a document from this subcommittee about new Anti-Satellite System Facilities (project number 11610) based at Langley Air Force base, Virginia. It had been approved by the president in the renewed Cold War of the mid-1980s to target Soviet satellites. Details like this were pieces in a 1000-piece jigsaw puzzle.

When he was based at the Peace Movement Aotearoa office in Wellington, from 1983 until about 1992, Owen spent long hours at the US Embassy library studying the Military Construction Appropriations and other US government documents. Each year the library received copies of the documents as microfiche (microphotos of each page on a film). Owen was a familiar visitor, hunched over the microfiche reader making notes and printing out interesting pages.

Many times this gave the first clue of construction somewhere in the world, pointing to that country hosting some new US military, nuclear or intelligence activity. The annual US military appropriation information is available to a researcher today. In fact it is now more easily accessed since it is online. But, if anything, Owen's pre-digital techniques make it clearer how this research is done well. It's a good reminder that the best sources of information are most often not in the first 10 or 20 hits of a Google search, the point where many people stop looking.



Owen, and Larry Ross, founder of the New Zealand Nuclear-Free Zone Committee, present a petition outside Parliament in 1983

Experience and persistence

An important ingredient in all these methods is persistence. The methods usually work best if, like Owen, a researcher sticks at them over time. Sticking at a subject means you start to recognise names and places in an otherwise boring document, appreciate the significance of some fragment of information and understand the big picture into which each piece of information fits.

Someone who reads deeply and studies a subject over a number of years can in effect become, like Owen, an expert. They may, like him, have no formal university qualifications. But they can know more about their subject than nearly anyone else, which is a good definition of an expert. They recognise the names and places and appreciate the significance of new evidence. A textbook example of this was when Owen returned to New Zealand in the early 1980s and went to see a recently discovered secret military site near the beach settlement of Tangimoana in the Manawatu.

Owen, who had spent years studying secret bases around the world, was the New Zealander most likely to know what he was looking at. There, on one side of the base, was a large circle of

antenna poles: a CDAA circularly-disposed antenna array. It instantly told him the Tangimoana facility was a signals intelligence base. It had the same equipment and was part of the same networks as the bases he had studied in Norway and Sweden.



Nicky Hager

Ensuring his research was noticed

The purpose of Owen's work was to make a difference to the issues he researched. A final and vital part of the work was getting attention for the findings of his research. Owen often spoke in the news and he wrote about the issues he was studying. Research, writing and speaking up are essential ingredients in political change. The part of this he probably enjoyed most was travelling and speaking in public to interested groups.

During the 1980s, he had major speaking tours to countries including Japan, the Philippines, Australia and Canada (and often around New Zealand). During these trips he would present information about military and intelligence activities in those countries. A 1985 trip to Canada, which he shared with prominent Palau leader Roman Bedor, was typical. He was in Canada for seven weeks, speaking in most parts of the country and numerous times on radio and television. One of the things he emphasised was that Canadians, as residents of a Pacific country, should be thinking about what was going on in the Pacific. One of Owen's recurrent themes was the importance of being aware of the Pacific.

The final ingredient of a good researcher is caring about the subjects they are working on. This can be heard clearly in everything Owen wrote about the Pacific. He described the Pacific being used for submarine-based nuclear weapons and facilities used to prepare for nuclear war. He talked about the big powers using the Pacific as the "backside of the globe," epitomised by tiny Johnston Atoll west of Hawaii where

the US military does “anything too unpopular, too dangerous and too secret to do elsewhere.”

He talked about things that were getting better: French nuclear testing on the way out; chemical weapons being destroyed. But also the region being used as a site for great power rivalry; and, under multiple pressures, the small Pacific countries being at risk of becoming “more repressive, less democratic.” He cared, and that was at the heart of being a public-interest researcher for decades.

Many of the problems he described are still occurring today. More research, more good research, on these issues and many others is crying out to be done.



Peacemonger, book cover.

Extract from *Peacemonger* — Owen Wilkes: *International Peace Researcher*, edited by May Bass and Mark Derby. Published by Raekaihau Press in association with Steele Roberts Aotearoa.

Why whistleblowers’ trust in journalism is fading

Mark Coddington and Seth Lewis
Nieman Lab, 17 January 2023

THERE IS perhaps no more studied — or worried-about — dimension of news over the past five to ten years than the decline of media trust. It’s extremely well-documented at this point, across virtually all corners of the globe. And we now have hundreds of studies examining just about every facet of this decline — its causes, its effects, and its many proposed solutions.

But there’s one less-studied group of people for whom a declining trust in the news media might be particularly damaging for journalists: whistleblowers. Journalists have depended on whistleblowers for some of their most consequential stories of the past several decades. But since whistleblowers often

initiate an interaction with journalists, their act is a leap of faith that requires significant trust in both the journalist individually and the professional standards and impact of the news media more generally.

That’s the argument that undergirds a new study by the University of Georgia’s Karin Assmann, published late last month in *Journalism Practice*. If whistleblowing to a journalist is about the greatest act of trust one can put in the media, Assmann wondered, what were whistleblowers’ criteria for that trust, and how do they evaluate journalists’ performance in light of those criteria? And more broadly, might the decline in media trust generally make it less likely that individual whistleblowers choose to trust journalists with their secrets?



Karin Assmann

Assmann interviewed 16 American whistleblowers who contacted journalists between the 1970s and 2010s. Nearly all of them worked for U.S. government agencies, and several were quite prominent, including Daniel Ellsberg and Jeff Wigand.

Assmann analyzed these interviews through the lens of *institutional logics*, the set of practices, assumptions, and values that govern a particular social sphere. She noted that whistleblowers are news consumers just like anyone else — they have an outside understanding of journalism’s institutional logic, one that they must see as substantially more valuable and trustworthy than their own institution’s logic in order to use the former to expose the latter.

She found that whistleblowers were drawn to journalists because of the overlap between their own motives and their perception of journalists’ motives

— keeping the powerful in check and advocating for the public interest. Their goal was to produce social change, so the name recognition and status of the journalist they approached played an outsized role in their criteria for trust.

Two other criteria were unsurprisingly significant: a commitment to protect their identity and substantial subject matter expertise. What’s more surprising is that many of them — about half — now see the news media as antagonistic and much less likely to fulfill the role they had hoped for when they blew the whistle. They variously described the news media as “corrupt, biased, politicized, self-serving, beholden to the government and neglectful of their sources,” Assmann wrote.

Some of their misgivings are rooted in specific failures of the journalists they worked with — in one case, journalists named the whistleblower at a press conference without his consent. Others were based on a more generally cynical disposition toward the press.

Many of the whistleblowers said they would attempt to circumvent the news media when releasing similar information today, given the ease of self-publishing and their perception of declining specialized expertise among journalists. Yet they were wary of this strategy too, citing the sophistication of government surveillance tools (especially in cases like that of Reality Winner) and susceptibility to censorship by social media platforms.

These whistleblowers have heavily bought into the institutional logic of journalism, with its self-regard for its watchdog role and strong professional standards, Assmann concluded. But even as they continue to reach out to the news media, their trust in journalists to hold up those standards has eroded. “Their expectations are increasingly difficult to meet in the U.S. media environment, where newsrooms cannot afford dedicated beat reporters with the expertise and resources necessary to be discovered and trusted by the next whistleblower as a reliable collaborator,” she wrote.

Trump, Pence and Biden won't be punished — but Chelsea Manning and Reality Winner went to prison

Jesselyn Radack and
Kathleen McClellan
Salon, 31 January 2023



Donald Trump and Mike Pence, in front of Chelsea Manning and Reality Winner (Photo illustration by Salon/Getty Images)

WE CAN NOW add Vice President Mike Pence to the list of former presidents and vice presidents who have had classified information found in their homes. While there are marked differences between Donald Trump intentionally keeping classified documents at Mar-a-Lago, and refusing to cooperate with authorities, and Pence and Joe Biden's apparent discovery of classified documents that inadvertently ended up in their homes — and were returned voluntarily and promptly — the commonality between these cases and others involving high-level officials is the lack of serious punishment.

As attorneys who have represented dozens of whistleblowers and media sources who have been criminally investigated, prosecuted and imprisoned for allegedly retaining or leaking classified information, we know there is a two-tiered system of justice when it comes to mishandling classified information: one for high-level and well-connected government officials, and another for whistleblowers and media sources. Powerful officials get a slap on the wrist, usually in the form of administrative punishments or no punishment at all. Whistleblowers and media sources at best have their careers ruined, and at worst must serve prison time, like our client Daniel Hale, an Air Force intelligence analyst who served in Afghanistan.

The government publicly billed drone strikes as “precision, targeted killing.” Hale disclosed that during one five-month period, more than 90 percent of those killed by airstrikes were not the intended targets. He is currently serving a 45-month prison sentence. Similarly, decorated military veteran and government intelligence contractor Reality Winner served a 63-month sentence for giving the press a single, accurate document about Russian hacking attempts. That is the longest civilian sentence ever imposed for a source who disclosed truthful information to the press. Winner's sentence was imposed even though special counsel Robert Mueller publicly disclosed nearly identical information in a different indictment a month before her sentencing.

It may be tempting to draw a line between retaining classified information and leaking it to the press, but the draconian law most often used to prosecute these cases (the World War I-era Espionage Act) makes no such distinction. Nor does it matter if a leaker disclosed information about illegal or unconstitutional government conduct, such as the U.S. torture program, secret mass domestic surveillance or war crimes. There is no public-interest defense. Whistleblowers and sources are professionally ruined, criminally prosecuted or imprisoned even in cases that involve no classified information, and even when the government agrees there has been no harm to national security.

The government threatened our client, National Security Agency whistleblower Thomas Drake, with spending the rest of his natural life in prison for allegedly retaining classified information in his home. When it turned out none of the information found in Drake's home was actually classified, it took judgments in both the courtroom and the court of public opinion to keep him out of prison — not the Justice Department's concession of its gross overreach. CIA whistleblower Jeffrey Sterling was convicted of alleged disclosure of secrets based not on the substance of the classified information disclosed, but based on thin metadata documenting conversations between himself and a journalist. Sterling served a 42-month prison sentence. CIA whistleblower John Kiriakou, another

client of ours, served a 30-month prison sentence because he was the first CIA agent to call waterboarding a form of “torture.”

In the most famous such recent case, NSA whistleblower Edward Snowden has been forced into a life of exile because he cannot get a fair trial here in the United States. Snowden cannot argue at trial that his disclosures were in the public interest, even though former Attorney General Eric Holder agreed that Snowden had performed a “public service” when he disclosed the NSA's widespread and illegal mass surveillance to journalists. In Army whistleblower Chelsea Manning's case, the government's own damage assessment found that her disclosures did no significant harm to national security. Nonetheless, she was accused of “aiding the enemy” and her sentence was so extreme (35 years), that Barack Obama commuted it.

Meanwhile, high-level officials who intentionally leak classified information for personal or political gain receive little or no punishment. While Hale, Winner, Drake, Sterling, Kiriakou and Manning all faced charges under the Espionage Act, former CIA Director David Petraeus received a sweetheart plea deal under a less serious misdemeanor law for leaking classified information to his biographer, with whom he was having an affair. Unlike the hard prison time served by whistleblowers, Petraeus was on probation for two years and paid a fine. Another former CIA director, Leon Panetta, has never been punished for leaking secrets to the filmmakers of “Zero Dark Thirty.”

What this stark disparity in punishment should make clear is that the national security establishment is secretive, powerful and far too unaccountable, no matter which political party is in the White House. Nonetheless, surely the fact that the FBI needed to search both a former president's house and the current president's house for mishandled classified documents should prompt a close examination of the bloated and byzantine secrecy bureaucracy, an examination that has long been necessary for a system plagued by over-classification and a lack of oversight, as we have previously written.

Moreover, the Biden Justice Department's attempt to hold Trump account-

able using this hopelessly broken classification system has led us down a destructive path of endless partisan fighting and both-sides-ism. Because the classification system and Espionage Act have been misused to punish media sources and chill investigative journalism by presidents from both political parties, the differences between Trump's actions and everyone else's will never resonate the way the Justice Department hopes.

What does already resonate with us, as free press and whistleblower advocates — and should alarm the public as well — is the way that senior officials and top brass can escape severe punishment, compared with the prison time served by whistleblowers and media sources whose only “crime” was to reveal information that exposed government ineptitude or wrongdoing, about which the public had a right to know. Unequal treatment under the law is not justice.

Chelsea Manning: “I struggle with the so-called free world compared with life in prison”

Emma Brockes
The Guardian, 22 October 2022

NIHILIST, anarchist, idealist, troubled young transperson crying out for help: when a 22-year-old US military analyst leaked hundreds of thousands of classified documents, everyone thought they knew why. They were wrong, she says. This is what really happened.

Chelsea Manning's memoir opens like a Jason Bourne novel with a scene in which the then 22-year-old, on the last day of two weeks' military leave, tries to leak an enormous amount of classified data via a sketchy wifi connection in a Barnes & Noble in Maryland. Outside, a snowstorm rages. Inside, Manning, a junior intelligence analyst for the US army, freaks out as the clock ticks down. In 12 hours, her flight leaves for Iraq. Meanwhile she has half a million incident reports on US military activity to upload from a memory stick to an obscure website called

WikiLeaks. The military would later argue she didn't have the clearance even to access these files — “exceeded authorised” as Manning puts it, in army parlance — but the fact is, she says, “It was encouraged. I was told, ‘Go look!’ The way you do analysis is you collect a shit-ton of data, a huge amount, in order to do the work on it.”



Everything about Manning on that afternoon of 8 February 2010 — her name, her gender, her anonymity, her freedom — is provisional and shortly to change. Three months later, she'll be in a cage in Kuwait. Three years after that, she'll be starting a 35-year prison sentence at Fort Leavenworth, Kansas. Meanwhile, the wider consequences of her actions that day will, depending on your view, topple governments; endanger lives; protect lives; uphold democracy; compromise global diplomacy; change the world in no measurable way whatsoever; or — Manning's least favourite interpretation — boil down to a cry for help from a troubled young transperson seeking the care she required. Today, sitting across the table from me in an office in Brooklyn, Manning is tiny, fierce, dressed all in black with long blond hair, and vibrating with enough nervous energy to power the lights. “Are we recording?” she says as her eyes skim the room. For the space of our 90-minute encounter, she will seem only partially present, each question yanking her back to some unseen site of contest where she must defend herself against endless and wide-ranging charges.

The memoir is called *README.txt*, a misleadingly clunky title (it refers to the file name she used for the leaks) for a highly entertaining book that, while

telling the story of why and how Manning leaked the data, gives equal space to her origins in Oklahoma, a complex and traumatic family story creating the conditions for all her subsequent decisions. It's a terrific read, full of unexpected turns and details that counter many of the assumptions made about Manning at the time. In the wake of her arrest, she was characterised by the US government as, variously, a nihilist, an anarchist, an idealist and an ideologue. Three days into her trial in 2013, Edward Snowden leaked classified National Security Agency (NSA) documents revealing how the US government spied on its own citizens, something, Manning notes drily in the book, that only damaged her image further. “I support Ed generally, but on a personal level, the timing was difficult for me,” she writes. Snowden emerged as the grownup, the credible whistleblower to Manning's loose cannon, “hero” to her “bad leaker”. Compared with Snowden, Manning was young, inexperienced and, because she was in prison, unable to defend herself in interviews. When, at the end of the trial, a photo surfaced of Manning wearing a blond wig and eye makeup, it delivered to her critics a further made-for-TV narrative: she had a secret she couldn't tell, so she told a nation's secrets.

Manning, now 34, snorts mirthlessly at this interpretation. “People tried to say, ‘Oh, this all happened because you were trans.’ It's like, no; it's because I was a data scientist who had way too much information and was actually trying to do my job, and realised that continuing on like this is not sustainable. We can't keep doing the same thing and expecting different results.”

[This is the beginning of a long and insightful review. Read it all online. And read *README.txt*.]



WBA AGM

Whistleblowers Australia Annual General Meeting

20 November 2022
North Parramatta, Sydney NSW

1. Meeting opened at 9.48am

Meeting opened by Cynthia Kardell, President. Minutes taken by Jeannie Berger, Secretary.

2. Attendees: Cynthia Kardell, Jeannie Berger, Feliks Perera, Michael Cole, Richard Gates, Katrina McLean, Yve DeBritt, Geoff Turner, Larry Vincent, Christa Momot, Carol O'Connor, Sharon Kelsey, Karl Pelechowski and Jane Anderson.

3. Apologies: Brian Martin, Lynn Simpson, Debbie Locke, Lesley Killen, Ray Hoser, Toni Hoffman, Frank Reilly, Heather Robinson, Rosemary Greaves, Jack McGlone, Alan Smith, Inez Dussuyer and Tom Lonsdale.

4. Previous Minutes, AGM 2021

Cynthia Kardell referred to copies of the draft minutes, published in the January 2021 edition of *The Whistle*.

Cynthia invited a motion that the minutes be accepted as a true and accurate record of the 2021 AGM.

Proposed: Richard Gates

Seconded: Feliks Perera

Passed

4(1). Business arising (nil)



5. Election of office bearers

5(1) Position of president

Cynthia Kardell, nominee for position of national president, stood down for Michael Cole to act as chair. Because there were no other nominees, Cynthia was declared elected.

Feliks Perera thanked Cynthia for her continuous hard work and devotion to WBA, he then asked the group to join hands in appreciation for her work.

Loud applause by all.

5(2) Other office bearer positions (Cynthia resumed the chair.)

The following, being the only nominees, were declared elected.

Vice President: Brian Martin

Junior Vice President: Michael Cole

Treasurer: Feliks Perera

Secretary: Jeannie Berger

National Director: Lynn Simpson

Cynthia thanked Brian for his advice and support and for editing *The Whistle*, which continues to improve, Michael for being so kind and supportive of those who sought his help, Jeannie and Feliks for doing the work that makes it possible for the group to function and Lynn for spreading our name globally through her work to ban live exports. Lynn has appeared before government inquiries in South America, the EU Parliament and Israel and is currently assisting South African activists. She has written regularly for the online magazine *Splash 24/7*.



5(3) Ordinary committee members (4 positions)

Because there were no other nominees, the following were declared elected.

Stacey Higgins
Katrina McLean
John Stace
Geoff Turner

Cynthia explained that Debbie Locke and Richard Gates had turned down her nomination for the committee for personal reasons. She thanked Debbie for her advocacy and ongoing commitment to all things to do with whistleblowing and Richard for being willing and able to work effectively outside his area of expertise to help others. He told us we are just one of the responsibilities he is having to let go because of a significant physical health problem. Both have indicated they will remain with the group.

Cynthia thanked Stacey for the ongoing management of our Facebook page, Katrina for speaking on our behalf at an Alliance Against Political Prosecutions rally in Canberra, John for being our WA contact and Geoff for managing our digital identity. Finally, regular feedback suggests that those listed as contacts for the group are doing a good job of it.

Richard Gates added that he wanted to thank the executive team for everything.

6. Public Officer

Margaret Banas has agreed to remain the public officer. Cynthia asked the meeting to acknowledge and thank Margaret Banas for her continuing support and good work.



A different sort of public officer

6(1) Cynthia Kardell invited a motion that the AGM nominates and authorises Margaret Banas, the public officer, to complete and sign the required submission of Form 12A to the Department of

Fair Trading on behalf of the organisation, together with the lodgement fee, as provided by the Treasurer.

Proposed: Richard Gates

Seconded: Michael Cole

Passed

7. Treasurer's Report: Feliks Perera

7(1) Feliks tabled a financial statement for 12-month period ending 30 June 2022. A motion was put forward to accept the financial statement.

Moved: Feliks Perera

Seconded: Michael Cole

Passed

Feliks' report

Once again it is my great pleasure to present to you the Annual Accounts to the Financial Year ending 30th June 2022.

You will note from the accounts that the association is in sound financial standing. For the Financial Year, the association had an excess of expenditure over income of \$434.73 reflecting some of the increase in costs for the production and posting of *The Whistle*. The membership renewals are on track and the many donations from the members still keep coming in. I am extremely grateful for the generosity of the membership, who never forget to send in that extra dollar to help the association in its important work.

Currently, the association has a very healthy balance at the bank of \$86,523.08. These funds will be utilised to defray costs of the 2022 Annual Conference, and some of the costs of future conferences.



Lastly, I want to express my sincere thanks for the great work done by the National Committee, and hope that the membership will continue to support the ongoing battle for the legal recognition of Whistleblowers.

ANNUAL ACCOUNTS TO YEAR ENDING 30 JUNE 2022

INCOME

DONATIONS	\$1322.00
MEMBERSHIP FEES	\$2450.00
<u>BANK INTEREST</u>	<u>\$8.39</u>
TOTAL INCOME	\$3780.39

EXPENSES

WHISTLE PRINTING & POSTAGE	\$4021.49
DOMAIN FEES	\$137.00
ANNUAL RETURN	\$48.00
PAYPAL CHARGES	\$8.63
<u>TOTAL EXPENSES</u>	<u>\$4215.12</u>
EXCESS OF EXPENDITURE OVER INCOME	\$434.43

BALANCE SHEET, 30 JUNE 2022

ACCUMULATED FUND BROUGHT FORWARD	\$9957.81
LESS EXPENDITURE OVER INCOME	(\$434.73)
LEGACY FUNDS GEOFF HOOK	\$72,000.00
BOB STEEL	<u>\$5,000.00</u>
	\$86,523.08
BALANCE AT NATIONAL AUSTRALIA BANK DEPOSIT FOR 2022 CONFERENCE	\$85,923.08
	<u>\$600.00</u>
TOTAL	\$86,523.08



Whistleblowers Australia also has a secret stash of cash. Unfortunately, no one knows where it is.

8. Other Reports

8. (1) Cynthia Kardell, President

Some of you may recall me telling you in June last year that our member Bob Steele took his life in April the same year.

This time round I've better news, as Bob has left WBA \$5000. It's a lovely thing, although I'd rather he was still on

the telephone, scolding me for not agreeing he had no choice but to do whatever. Mind I won't miss trying to get him to let others have a say at the conferences. He was always so sure he was right and, by gum, we were going to have to hear it, come hell or high water.

Bob joined WBA in 1993 after the fracas that was the pilots' strike in 1989. He was one of the pilots who did not go on strike. Part of the subsequent deal between Ansett and the pilots' union required them to let him go. Bob sued but says his barrister, a young up-and-coming Peter Costello, forced him into a legal settlement. He was black-listed and never flew jets again. He got some short-term work on helicopters in PNG and later as an assistant pilot with Careflight NSW. When the government announced funding cuts in the lead-up to it being privatised, he was one of the first to be shown the door. He had had an unrelated accident which left him technically a paraplegic and, later, on a disability pension.

I will remember Bob for many things, but mostly for his fierce intellect and commitment to all things to do with whistleblowing.

This last year has been a significant year for some serious whistleblowing in the national interest.



Andrew Macintosh

In March 2022, Andrew Macintosh, former insider and now ANU law school professor, blew the whistle on the former government's carbon offsets market. *The Juice Media* explainer does his job for him very nicely, but more seriously, Macintosh says the carbon

credits and offsets market is wasting \$1 billion in taxpayer funding.



At the time, the Labor Opposition promised an independent review of the system and the Greens referred his findings to the Commonwealth Auditor General calling for a full, independent inquiry. Plus, the United Nations has pulled together an international panel to assess existing carbon credit systems (not just ours), to develop the criteria to ensure integrity. Their reports are due at the end of this year.



Early on the four-year-old controversies concerning David McBride, Richard Boyle and Witness K's former lawyer Bernard Collaery looked set to continue. Then in July the new Government got it partly right when it dropped the criminal prosecution against Collaery but got it very wrong when it refused to drop the criminal prosecutions against the other two men. Dreyfus said they were different, but they're not. Both cases raise serious international concerns that play out globally in terms of reputational risk and integrity. I penned a letter to Mark Dreyfus and included Greens senator David Shoebridge and independent MP Andrew Wilkie. In August I wrote again about letting Boyle and McBride off the hook and, followed up with an article in the October *Whistle* about why he'd made the wrong decision.

Sharon Kelsey stirred Queensland's Local Government Association into a frenzy when she blew the whistle on her boss, the former Logan City Shire mayor Luke Smith. They used their

connections to force an inquiry into Queensland's public service and its watchdog the CCC. Sharon lost her unfair dismissal case. *The Australian* newspaper took sides early on, refusing to report anything favourable about Sharon. The mayor's criminal trial on two charges continues, but it's not over yet and Sharon could still turn the tables. She is featured in one of Getup's videos called "The cost: whistleblowers in Australia."



In March, Julian Assange married Stella Morris, the mother of their two boys and he's recently had Covid. Other than that, he's spent another year largely in solitary in HMP's Belmarsh Prison waiting for the UK's High Court to decide whether he can appeal the Magistrates Court's recent decision to allow his extradition to the USA. It's a dreadful scandal that has implications for us all. If the US succeeds it will have rammed home the fact that their law applies to us wherever we are.

Live sheep exports whistleblower Lynn Simpson looks like finally winning the day, with the new Labor government promising to phase out live sheep exports. Lynn says it is no longer a case of if but when, as cultural and market norms shift and, the shipping fleet passes its use-by date. Lynn continues to push for change globally, helping activists and politicians in other countries. Germany looks set to ban live exports, so the EU will probably follow suit.

I've helped those who have contacted me, written to all of you in a regular way, posted some short Op-Eds on our Facebook page, answered Brian's call for an article or three for the newsletter, and I have done the mail-out. That's about it, except to say thank you for your encouragement and support. Promise to do more in the coming year.

8(ii) Communications report

Geoff Turner provided a brief summary of our online activity. It began with the acquisition of the domain name whistleblowers.com.au in 1999, when one of our members unexpectedly tried to turn WBA into a profit-making entity. In 2000 we acquired the domain whistleblowers.org.au, which is more appropriate for our not-for-profit organization. This remains the domain name by which we are known.



Geoff recently moved the domains to a registrar based in New Zealand, because it seemed to be competent and because doing so reduced the fees to be paid. At about the same time as this transfer was taking place, auDA, the administrator of Australia's top-level domain, opened the new yourname.au top-level domain, so we acquired the domain whistleblowers.au. Holding the three domain names helps to prevent others from masquerading as WBA.

Our website continues to be hosted by suburbia.org.au, a public-access network whose purpose aligns well with ours. We contribute periodically to the running costs of Suburbia.

9. Conference/AGM 2023 is to be held at the Uniting Venues in North Parramatta, 18–19 November 2023.

10. AGM closed 12.30pm



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Members of the national committee

http://www.bmartin.cc/dissent/contacts/au_wba/committee.html

Previous issues of *The Whistle*

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Thanks to Cynthia Kardell and Lynn Simpson for proofreading.

Don't trust whistleblower protection

If you think whistleblower laws will protect you, think again. Read what Jeff Morris and Cynthia Kardell have to say — and beware.



And if you think politicians will fix the problems, keep on dreaming. Maybe next time!



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