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

The Whistle

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Newsletter of Whistleblowers Australia (ISSN 2205-0299)

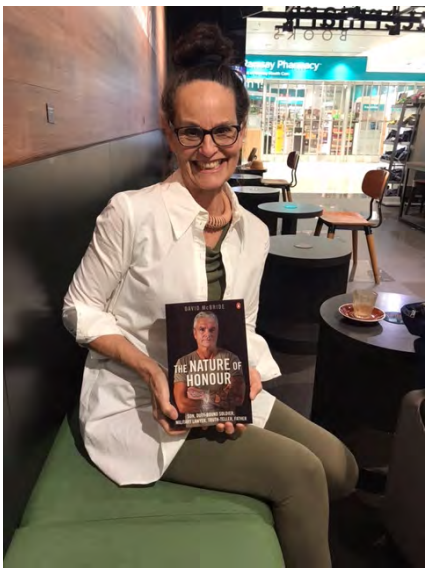
Sharon Kelsey, Richard Boyle, Jeff Morris, Kent Quinlan and Peter Fox

At Whistleblowers Australia's national conference, in Sydney in November, we heard several fascinating talks. Written versions of two of them are provided here.

Advocate for things that matter

Sharon Kelsey

YOU WOULD THINK that sitting down to write about a case that you know so well would be easy. It's not. Like so many of you, revisiting this period in my life still opens raw wounds. Although the events are now six years in the making, they are as fresh and vivid as if they are still unravelling. And, perhaps they are.



Sharon Kelsey

Last year, in *The Whistle* (January 2023 issue), I outlined some of the key aspects of my case. Suffice to remind you that in 2017 I was the CEO of Logan City Council in Queensland. Logan is one of the largest councils in Australia and is located between Brisbane City and the Gold Coast. Not long after I started as the CEO, I had cause to make a Public Interest Disclosure (PID) to the Council and to the Queensland Crime and Corruption Commission (CCC).

Only a few months later my employment was terminated by a vote of the Council. The then mayor, Timothy (Luke) Smith, did not take part in the vote. He was restrained from participating by a court order pursuant to a decision made by the Industrial Commission. However, on 7 February 2018 the vote was held with the remaining 12 councillors. It was a 7:5 vote to terminate my employment. I have been pursuing the legality of my termination ever since. The matter is still before the courts.

The more things change, the more they stay the same

Just like I outlined in my article last year, the nature of the PID and my subsequent disclosures to the CCC remain the subject of court suppression orders. But unlike last year, some of the aspects that were before the criminal courts in Queensland are now resolved. In particular, the criminal charges relating to mayor Smith.

Days before his scheduled trial to face corruption charges, and years after staring down television cameras protesting his innocence, I received the news that the mayor had entered a guilty plea. I'd anticipated he would. I was living interstate and travelling to testify meant planning ahead but I had held off finalising my flight arrangements. I was convinced he would enter a guilty plea. I'd like to say, I'm a lawyer (which I am) and I know these things. But my knowing didn't have anything to do with law school. When the news broke, all I felt was that my private knowing was now a public vindication.

A boat, influence and interests

The mayor pleaded guilty to receipt of a secret commission (secretly accepting a boat from a developer while in public office), misconduct in public office (relating to using his influence to favour the recruitment process of a council director) and failing to update his register of interest (by intentionally failing to inform the CEO — me — of a matter of interest within the required period). His plea to the corruption charges saw him sentenced to eighteen months imprisonment served as a wholly suspended two-year sentence, along with a term of community service. He had convictions recorded.

I was asked whether I was disappointed that his term of imprisonment was suspended. I responded that what I was feeling wasn't about the mayor. It was about so many other things. Things I am still prohibited from disclosing in public. Many people are surprised that the finalising of the mayor's criminal charges did not automatically lift the suppression orders relative to my case. Suffice to say, not yet.

And so, now what?

I am continuing to pursue a cause of action relating to the making of the PID and the termination of my employment that followed. There is a string of decisions (17) that toggle between the Industrial Commission, Industrial Court and the Court of Appeal.

I am seeking to overturn the substantive decision that can be found at Kelsey v Logan City Council & Ors (No.8) [2021] QIRC 114 (PID/2017/3) O'Connor VP. If you are interested in the full carriage of the matter then all of the decisions can be found at www.sclqld.org.au. You will need to search through the Industrial Commission, the Industrial Court and the Court of Appeal to see all of the judgements. They start on 1 February 2018 just before my termination.

A little more to unravel

I look forward to the day when I can openly talk about the things that I am currently prohibited from discussing. I know it will not only be a cathartic experience for me but an eye-opener for many who have watched and supported me from the sidelines without ever being able to know the full story. For now, it is sufficient to inch closer to a full account. Until next time …

What would a whistleblower need? On speaking up for babies who were maimed or died

Michael Cole

THE AIM of my presentation is to demonstrate how difficult it is, and how much evidence is needed, to convince anyone to investigate a public interest disclosure (PID).

There is a conflict of interest when the recipient of a disclosure (the accused) must decide whether to thwart or investigate the disclosure of their own malfeasance. It is in their interest to ignore it or use codes, policies and legislation to retaliate and discourage the discloser from pursuing the accusation.

Currently whistleblower protection prevents the recipient from using the employment contract, code of conduct or sundry protocols as blunt weapons of reprisal against the discloser. But there needs to be protection from reprisals taking the form of criminal prosecutions for obtaining threshold evidence. The discloser must make a strong case to reliably ground corrective action. There will not be an opportunity to support the disclosures once made.

The very nature of whistleblowing means "making" a disclosure is not a point in time event, but includes antecedent preparation and post disclosure follow up. Like "making" a cake.

The malfeasants

In early 2000, Professor William Tarnow Mordi was appointed director of the neonatal intensive neonatal unit at Westmead Hospital.

Over eight years, 12 reports of harm, or management that increased the risk of death, in babies under the care of Mordi were lodged on the NSW Health incident information management system (IIMS).

There were 25 babies over 8 years, three detailed below, who died or were harmed or maimed whose cases were discussed at the minuted neonatal unit's Morbidity (harm) and Mortality (death) meetings (M&M). The cases tended to show incompetent care by Mordi.

A few nurses and doctors did intervene to reduce harm to babies, sometimes at great cost to themselves. Most did not, saying they had families, careers, and mortgages to consider. In this they were correct.

Case 2 Baby O

Mordi inadvisably graded feeds rapidly and used feed thickener in a baby at high risk of gut inflammation and death. Baby developed necrotising enterocolitis (NEC). Mordi incompetently moved the baby to a different ward and gave intravenous morphine (a breathing depressant) without giving resuscitation or life support. The baby died.

Case 16 Baby R

Fifth case of poor management of NEC by Mordi despite four previous deaths and M&M discussions and warnings (Babies O, L, M and J). The baby died.

A baby not at Westmead

Case 21 Baby G

Negligent delay of 8 hours before undertaking an emergency exchange transfusion of a baby with critically severe jaundice, because Mordi insisted on waiting for Whole Blood. Consequently, the baby suffered profound brain damage and blindness because of the incompetent delay in treatment, as warned in the PID of 2004.

First public interest disclosure, 2004

My PIDs were made via the IIMS and emails to Professor Peter Illingworth (Mordi's immediate manager) to document harm to babies.

The PIDs also warned of potential harm because of Mordi's insistence that Whole Blood only should be used for exchange transfusion. That would cause dangerous delay. The Blood Bank agreed. Ignoring this warning resulted in the maiming of Baby G in 2008.

First reprisal

In September 2004 Mordi determined my performance to be "exceeding expectation." I signed the appraisal form. In my absence, he changed the performance appraisal to "unsatisfactory" and referred me for a Performance Improvement Plan with Peter Illingworth for unnecessarily changing his management of babies.

Mordi admitted in writing that his accusation was untrue. Dr Andrew Baker (clinical governance) determined that I had refused to participate in a grievance process and that I had never been found to be unsatisfactory.

Obtaining sufficient documentary evidence

From the time Mordi doctored my performance appraisal I began to covertly record most conversations that I was party to, for my own protection. I knew that I would only be able to play them in court to protect my interests. Luckily, I never needed to submit them to a court. But I had them, to protect my rights.

I also photocopied parts of babies' medical records and the M&M notes. And I saved work emails and documents including screenshots. If the public interest disclosures had been acted upon many babies would not have

been harmed or maimed and might not have died.

It seemed obvious to me that Westmead Hospital's governance, administration and Human Resources (HR) would never investigate claims about Mordi's incompetence or take effective action to protect babies.

The reprisals continued until I resigned in 2010, with at least ten manufactured and meaningless complaints including bogus disciplinary investigations and bogus performance improvement plans, all of which I refused to sign and which were simply aborted without closure. The only positive outcome was that a senior medical appointments committee revoked Mordi's clinical privileges in 2008.

Human Resources

HR, now called Humans and Culture, is the department tasked by management with getting rid of employees (like whistleblowers who speak up in the public interest). They have years of experience, with knowledge of all the traps that unsuspecting employees can be led into. They isolate the employee by making the process "confidential" and secret. They can use the Code of Conduct and sundry protocols as blunt weapons against naïve employees who lack power and knowledge. And they are professional at it.

If it leaks out from management that an employee is "on the outer," they become fair game for anyone wanting a free kick at them. For example, colleagues, and even junior nurses, began to undermine me, including by changing my clinical management orders, with the support of management.

The regime used by HR is legally sanctioned behaviour, but at times extends to permanent psychological injury up to and including suicide. It can feel very traumatic psychologically and leave a person unable to remember the events without experiencing physical symptoms of what feels like post-traumatic stress disorder.

The case of "Dr Sue" at Westmead Hospital

"Dr Sue" (not her real name) was also at Westmead Hospital. She was a senior doctor who disclosed poor patient outcomes in her area. Westmead Hospital management and HR responded with the usual confidential, isolating, secret, disempowering administrative sanctions which were used to browbeat her into submission. Her brain went into "fight or flight" mode which is debilitating if sustained. Finally, her adrenals could no longer maintain the high levels of cortisol required and she began to die of adrenal exhaustion. She required life support in intensive care. After rehabilitation she started another career.

Take-away messages

1. Conceptually a public interest whistleblower is a truth teller who speaks up about malfeasance to a recipient who is conceptually someone who can put things right. The whistleblower wants to trigger remedial action, not simply make a statement. Enough evidence is required to trigger action. A whistleblower is a person who has enough evidence to right wrongdoing for the good of the public.

2. Traditionally a whistleblower ends up harmed or dead. John the Baptist told King Herod he should not have married his brother's wife. John the Baptist was beheaded.

3. Malfeasance usually applies to public officials or the government. It is against the government's interest to introduce viable whistleblower protection.

4. The person or entity that receives the disclosure can ignore it, or pass it to the "accused" to ignore. Or find no supporting evidence. Jeff Morris's reports of bank malfeasance were ignored for five years.

5. The whistleblower intuitively believes the investigator will be more likely to act if there is some evidence of the claim, rather than just a bald disclosure.

6. But counterintuitively, anything done to obtain any evidence is likely to be a criminal offence and a basis for reprisal.

7. Certain evidence-gathering activities should be decriminalised provided the activity is to obtain evidence of malfeasance that would be probative if a PID were made. These criminal provisions were intended to prevent malevolent use of the data, not to prevent beneficial acts in the public interest.

8. The recipient ("accused") has no reason to and is not required to investigate a claim without supporting documentation.

9. At last whistleblower legislation prevents the accused malfeasant from using the work contract, code of conduct or related protocols against the whistleblower. Reform now needs to give authority to potential whistleblowers to obtain enough evidence to make a recipient investigate and act.

10. This presentation demonstrates just how far an institution will go to avoid investigating a disclosure of malfeasance and how much evidence needs to be collected, collated and presented in order to have any impact.

11. Reprisals have severe effects; HR and senior management can cause harm up to being potentially fatal.

12. Professor David Isaacs still tells people that nothing I say should be believed because I am mentally unbalanced. Westmead Hospital sent me to two psychiatrists *of their choosing* and both said that I had no mental illness (other than being insane to remain at Westmead Hospital) and that I should leave before they destroyed my mental health.

I acknowledge the input of other whistleblowers who have informed the views expressed here.

BOOK REVIEW

Espionage and whistleblowing

Brian Martin

In 1917, the United States entered World War I, several years after it started. US President Woodrow Wilson led the push to join the war, which included conscription and clamping down on dissent. Congress passed the Espionage Act, targeted at those who hindered the war effort.

Woodrow Wilson

In its usual meaning, espionage refers to spying, for example giving or selling military secrets to the enemy. That would compromise military operations and hence had to be countered with the severest penalties. The idea is that lengthy imprisonment would deter spying on behalf of the enemy. (Spying for "our side" is another matter.)

Who would have guessed that a law passed against spying during World War I would be used against US whistleblowers more than a hundred years later? If you want to know the full story, read Ralph Engelman and Carey Shenkman's book *A Century of Repression: The Espionage Act and Freedom of the Press.* This is a long, scholarly and highly referenced treatment, filled with so much fascinating detail that I can only mention a few highlights.

Engelman and Shenkman provide a detailed examination of the uses of the Espionage Act, giving informed accounts and commentary on a range of cases. Some of these have been high-profile stories, including those involving Daniel Ellsberg, who leaked the Pentagon Papers to the media, Chelsea Manning who leaked documents to WikiLeaks, Edward Snowden who leaked documents about spying by the National Security Agency, and Julian Assange, WikiLeaks founder.

The United States is known as the home of free speech, with the First Amendment to the Constitution as the signifier of a commitment to protecting the speech of citizens and the press. Alas, much of this reputation is a mirage. Espionage Act prosecutions provide a telling illustration. US federal governments over the past century have wanted to silence criticism of their policies, and the Espionage Act has been one of their most useful tools.

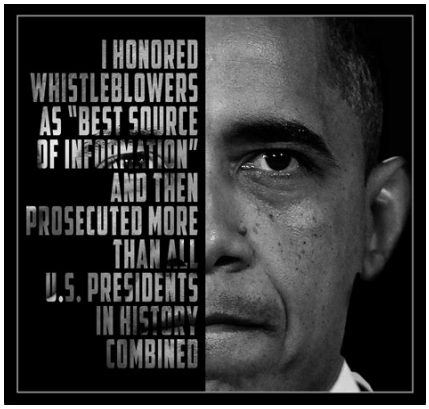
During and after World War I, the act was used to smash the socialist left. By the end of the war, nearly the entire dissident press had been banned from the postal system. So much for freedom of the press. I was astounded to read about how the Espionage Act was used, in a seemingly random process, against critics of the war.

> "For example, in Iowa a man received a one-year jail sentence for applauding and contributing twenty-five cents at an antiwar rally. A Vermont pastor was sentenced to fifteen years for distributing a pacifist pamphlet based on the teachings of Christ. A Russian-born woman, a socialist editor, earned a ten-year sentence for making an antiwar statement to a women's dining club in Kansas City." (p. 32)

During the Cold War, the Espionage Act was linked to the rise of McCarthyism, the campaign against left-wing figures from all walks of life. After 9/11, it was used against critics of the War on Terror.

The Espionage Act was often used as a weapon against the left, but this was not just a tool for Republican administrations. The Act had its genesis in the Democrat administration of Woodrow Wilson, and during World War II, the Democrat President Roosevelt contemplated using the act against a prominent newspaper, the *Chicago Tribune,* owned by a wealthy conservative. (We need to remember that US conservatives have often opposed involvement in foreign wars.)

In the 2000s, national security whistleblowers have been prime targets. The Obama government launched more prosecutions of whistleblowers under the act than all previous administrations combined.



Engelman and Shenkman tell how the scope of the act was widened over the years via legislation and court rulings, some of them involving well-known figures and others, just as important, concerning cases mostly forgotten. Even some of the failed prosecutions, for example against Daniel Ellsberg, did little to protect future targets because court rulings were too narrow.

In Australia, prosecutions in the domain of what is called national security are often really about protecting governments and officials from embarrassment and enabling corruption to continue with impunity. There are obvious parallels with the US experience. The overall pattern is one of finding ways of silencing critics.

In several places, Engelman and Shenkman note that prosecutions were intended to send a message to others who might think of speaking out. For example, Shamai Leibowitz, accused of giving FBI documents to a blogger who criticised Israeli government policies,

was convicted and imprisoned, as "the government insisted on a punitive approach that would set an example for other would-be insider sources." (p. 182)

Thomas Drake, who leaked information from the National Security Agency to the *New York Times,* initially cooperated with investigation of the leak, but was still prosecuted. "The goal of the prosecution had shifted from investigating the *Times* story to making an example of Drake to discourage other insider sources from going to the press." (p. 178)

However, this draconian approach had another effect: some insiders, like Edward Snowden, learned to avoid internal reporting processes and go straight to the media.

Those who have followed the Australian cases of Witness K, Bernard Collaery, David McBride and Richard Boyle will see parallels with the use of the Espionage Act in the US. For example, John Kiriakou, who revealed torture by the CIA, was the only person to be imprisoned: none of the torturers or administrators were.

John Kiriakou

> "Disclosures in Espionage Act cases have often exposed questionable or illegal conduct, whose perpetrators nonetheless often elude accountability. It is noteworthy that whistleblowers have been imprisoned for extended sentences for revealing serious violations of the US Constitution or international law for which offending officials are rarely punished or even reprimanded." (p. 265)

Related to this is a double standard: some high-level figures, like General David Petraeus, who revealed highly secret information to his biographer-lover, got off with a misdemeanour conviction with no jail time, whereas Jeffrey Sterling, who leaked information in the public interest, went to jail.

In Engelman and Shenkman's telling, the ambit of the Espionage Act has gradually expanded so that it covers insider sources. The culmination, so far, is its use against Julian Assange.

> "The indictment of Assange marked the first full-fledged frontal legal attack on a publisher, based on the Espionage Act, for disclosing government secrets. It represented an unprecedented extension — unlikely the last — of the Espionage Act to threaten freedom of a press now deemed 'the enemy of the American people' by the federal government." (p. 247)

Engelman and Shenkman describe how the *New York Times* has distanced itself from Assange, reporting on unsavoury aspects of his appearance and behaviour. Decades earlier, the *Times* had done the same thing to Ellsberg.

Engelman and Shenkman note that the US, unlike Britain, has never had an official secrets act. However, the Espionage Act, as it has been developed, serves as a surrogate. It is plausible that if the Espionage Act hadn't been available, some other means would have been found to achieve the same goals.

Alongside the story of the Espionage Act, Engelman and Shenkman tell about the American Civil Liberties Union, the ACLU, well known for its defence of free speech. The ACLU was founded just after World War I in response to the excesses of free-speech suppression. But the ACLU wasn't always a great defender. It went silent during much of the Cold War, and new organisations sprang up to take its place. The trajectory of the ACLU and other US free-speech defenders is paralleled in Australia by the variety of organisations that have taken up the torch for whistleblowers and the media.

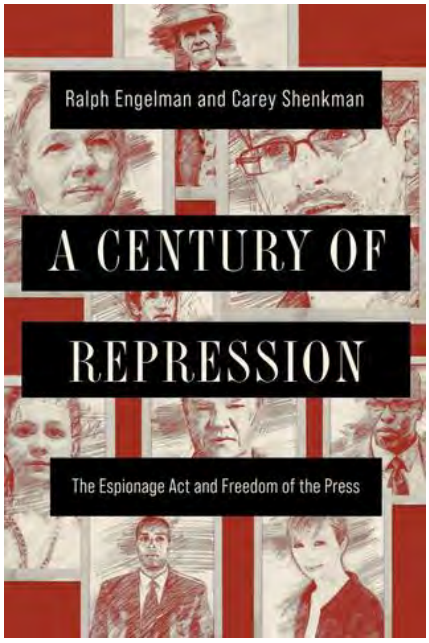
Strangely, at one point the CIA proposed an alternative to the Espionage Act to criminalise unauthorised disclosures. The CIA director William Casey wanted to discredit confidential sources, saying "Unless the leaker can be painted in hues distinctly different from the whistleblower, the battle, indeed the war, on leaks will most certainly be lost." (p. 152)


William Casey

Leaker, whistleblower: what's in a name? Engelman and Shenkman say using the term "confidential source" offers more status.

Engelman and Shenkman sum up:

> "For over a century, the Espionage Act has served as a means of information control, an obstacle to the ability of the press to report critically about US foreign policies and military engagements. Its fundamental flaw consists of associating, in a single law, the act of espionage on behalf of a foreign power with all other disclosures of information deemed secret by the federal government. The act permits the government to conflate actions necessary in a democratic society — dissent, whistleblowing, and investigative reporting — with disloyalty." (p. 249)



Brian Martin is editor of *The Whistle.*

WBA AGM

Whistleblowers Australia Annual General Meeting

19 November 2023
North Parramatta, Sydney NSW

1. Meeting opened at 9.06 am
Meeting opened by Cynthia Kardell, President. Minutes taken by Brian Martin, Vice president.

2. Attendees: Cynthia Kardell, Geoff Turner, Feliks Perera, Lesley Killen, Larry Vincent, Karl Pelechowski, Jeff Morris, Sharon Kelsey, Michael Cole, Yve De Britt, Brian Martin and one other.

3. Apologies: Jeannie Berger, Carol O'Connor, Alan Smith, Richard Gates, Inez Dussuyer, Debbie Locke, Lynn Simpson, Rosemary Greaves, Jack McGlone, Stacey Higgins and Christa Momot.

4. Previous Minutes, AGM 2022
Cynthia Kardell referred to copies of the draft minutes, published in the April 2023 edition of *The Whistle.*

4(1) Cynthia invited a motion that the minutes be accepted as a true and accurate record of the 2022 AGM.
Proposed: Larry Vincent
Seconded: Feliks Perera
Passed

4(2) Business arising (nil)

This wasn't one of the items of business arising.

5. Election of office bearers

5(1) Position of president
Cynthia, nominee for position of national president, stood down for Brian to act as chair. Because there were no other nominees, Cynthia was declared elected.

Feliks thanked Cynthia for her hard work and devotion to WBA. 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

5(3) Ordinary committee members (6 positions)

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

Stacey Higgins
Katrina McLean
Christa Momot
Jeff Morris
John Stace
Geoff Turner

Cynthia offered information about the activities of members of the committee.

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.

6(1) Cynthia Kardell invited a motion that the AGM nominates and authorises Margaret Banas, the public officer, to complete and sign the required Form 12A on behalf of the organisation for submission to the Department of Fair Trading, together with the lodgement fee, as provided by the treasurer.
Proposed: Feliks Perera
Seconded: Lesley Killen
Passed

7. Treasurer's Report: Feliks Perera

7(1) Feliks tabled a financial statement for 12-month period ending 30 June 2023. A motion was put forward to accept the financial statement.
Moved: Feliks Perera
Seconded: Larry Vincent
Passed

Feliks' report

Once again, it is my pleasure to present to you the accounts of the Association for the Financial Year ending 30th June 2023.

The Financial Year recorded an excess of expenditure over income of $6,667.81. The largest item of expenditure was the cost of the 2022 conference which was paid in full from the funds of the association.

The donations received from the membership are also higher than those received for the last financial year. My sincere thanks to the membership for this continued support. The association is in a strong financial position thanks to the generous donations from the membership and also the legacies received from the estates of the late Geoff Hooke and Bob Steel. During this financial year, the association received a final payment of $1760 from the estate of the late Geoff Hooke. In the coming financial year, total legacies received will be amalgamated with the accumulated fund.

It is the sincere dedication of the membership that allows this great work of seeking protection for all whistle-blowers to continue, and I sincerely hope that our members will continue to support this worthy cause in the years to come.

ANNUAL ACCOUNTS TO YEAR ENDING 30 JUNE 2023

INCOME

DONATIONS	$1754.00
MEMBERSHIP FEES	$1825.00
BANK INTEREST	$8.12
TOTAL INCOME	**$3587.12**

EXPENSES

WHISTLE PRINTING & POSTAGE	$3916.61
DOMAIN FEES	$167.45
ANNUAL RETURN	$50.00
2022 CONFERENCE COSTS	$6120.87
TOTAL EXPENSES	**$10,254.93**
EXCESS OF EXPENDITURE OVER INCOME	$6667.81

BALANCE SHEET, 30 JUNE 2023

ACCUMULATED FUND AT 30 JUNE 2022	$9523.08
LESS NET EXPENDITURE FOR 2022–2023	2855.27

Legacy Fund

GEOFF HOOK LEGACY FUNDS	$113,760.20
BOB STEEL LEGACY FUNDS	$5,000.00
	$121,615.27
BALANCE AT NATIONAL AUSTRALIA BANK	$121,015.27
PREPAID DEPOSIT FOR 2023 CONFERENCE	$600.00
TOTAL	**$121,615.27**

There was a discussion of no-shows at the conference, whether to charge for attending, and how to encourage people to attend. Cynthia emphasised that a major purpose of the group was to bring people together.

A different discussion ensued about accommodation for those attending the conference.

8. Other Reports

8(1) **Cynthia Kardell,** *President*

This has been a tumultuous year with the federal government continuing to ignore mounting calls from across society to discontinue the criminal prosecutions against whistleblowers David McBride and Richard Boyle. It wants us to believe it is protecting the Commonwealth Director of Public Prosecution's independence, but we aren't buying it. Not when the public's interests have been so comprehensively catalogued by former judges, well respected commentators and thinkers and grassroots lobby groups like ours.

David McBride

David's case got underway last Monday, with a re-run of those tired old arguments about why the case needs to be heard behind closed doors, lest we embarrass those who turned a blind eye, fabricated excuses and now stand accused of covering it up. Contrast their response with David's when the Australian Federal Police (AFP) raided the ABC's head office. The AFP demanded to know the identity of their source. David didn't hesitate. He stepped out of the shadows, identifying himself. I think the government punished him for showing them up. It's pitiful, but there it is — that's what petty criminality looks like when it's caught out.

Richard Boyle

Last March ATO whistleblower Richard Boyle lost his claim for immunity from criminal prosecution when Justice Liesl Kudelka limited "making" a public interest disclosure or PID to the actual disclosure of information. But even if he doesn't lose his appeal the laws have to be changed to *redefine "making" a PID to include* any reasonable action taken by a whistleblower to gather, collate and curate information, documents, and evidence, in drafting and ensuring that a PID claim is properly considered, investigated, and resolved openly to the public's satisfaction. It is only thirty years overdue. The *employer* has always been *impliedly, directly, and always vicariously liable for the wrongs laid bare by a* whistleblower's *PID*. It's never been the selfless PID recipient the laws pretend it is.

I understand why it seemed practical and cost effective to set up an "internal" PID system in this way: but it's wrong because the employer is only ever the "accused" — not the impartial investigator it's set up to be. It has been a costly experiment causing immeasurable harm in other ways, as employers have been able to work with an external investigator like the ICAC, as if it too was independent of the PID claim being made. Employers must be required by law *to establish internal investigative units* that are staffed by trained experts, who are financially and legally independent of the employer in the decisions they take in relation to the PIDs they receive. It will liberate whistleblowing for the right reasons in satisfaction of the public's interest, by

recognizing that the employer is only ever the "accused". Changes like this have the capacity to end a 30-year fraud on whistleblowers.

It is possible, just possible, that the time is ripe for change. Just think what might have been, had David McBride been able to raise his claims internally with a unit legally independent of his employer in the decisions it took in relation to the claims he made. And had he been able to take his PID claim, including those video files, to the media without the law allowing his employer to re-classify those same files as an unauthorized disclosure to enable a criminal prosecution. I don't pretend to have all the words we need to stop a 30-year-old fraud, but we need to make a start in any way we can.

Kathryn Kelly

I'd like to take this opportunity to thank Kathryn Kelly, the founder of the "drop the prosecutions" group, which morphed into the Alliance Against Political Prosecutions or AAPP to include the efforts of other like-minded groups like ours. Kathryn's team has done a mighty job of bringing people and causes together, with the aim of freeing Witness K, Bernard Collaery, Julian Assange, David McBride, Richard Boyle and more recently, former US Marines pilot Daniel Duggan. It has spawned an amazing group of talented new speakers and worthy projects, like former senator Rex Patrick's Whistleblowers Justice Fund and the Human Rights Law Centre's Whistleblower Project. It's fair to say that but for Kathryn and her team, Bernard Collaery would have been convicted and we wouldn't be where we are now with next year shaping up to be the biggest in whistle-blowing since the eastern states were engulfed in the Fitzgerald Inquiry and the Wood Royal Commission of Inquiry.

AAPP rally

I'd also like to thank our hardworking team. Jeannie for her unstinting support and cut-through. Feliks for always taking part. Brian for bringing seemingly disparate material together as a whole in *The Whistle.* It's the sort of magic "curation" that Justice Liesl Kudelka won't have a bar of. And I've learnt I'm not the only one who appreciates Brian's irony with his choice of images. Lynn for her strategic patience. Michael for putting the finger on something that hasn't been thought of and Stacey for building up the reach of our Facebook page. I'm blessed and I know it!

And then there are all of you, the members. I enjoy sending you weekly bulletins about this and that and getting your ideas back, so thank you. I'd also like to thank Jeff Morris, Troy Stolz, Sharon Kelsey and Kent Quinlan for turning up, for fellow whistleblowers David McBride and Richard Boyle. The whistleblowers past and present, who made the ABC's Background Briefing 6-part series called "The Whistleblowers" possible: it will be an enduring sample of the best of whistleblowing. The current crop of high-flyers only this month wrote an Open Letter to the Attorney General to urge him to drop the now infamous prosecutions. It was splashed across the media courtesy of Rex Patrick's Whistleblowers Justice Fund and got some very good coverage. And finally, Jim Page, for continuing to write to Julian Assange in a regular way, which is why yesterday we all posed for the photo he'll send off to Julian. It's what lies at the heart of who we are.

Next year may well be a turning point for whistleblowing. Let's all of us do what we can to make it a turn for the better.

8(2) **Brian Martin,** *Whistle* editor

Brian said that *The Whistle* has two main sections. The "media watch" section contains stories from various media sources. He subscribes to Google Alerts about whistleblowing, and keeps on the lookout for other relevant items. Suggestions are welcome at any time for "media watch" stories.

The "articles and reviews" section contains original contributions. Those who have most often supplied articles are Cynthia, Brian and Kim Sawyer. Brian welcomes articles from others and is willing to help shape them into better quality. He also encouraged attendees to talk to people they know who might write for *The Whistle.*

9. Conference/AGM 2023 is to be held at the Uniting Venues in North Parramatta, 16–17 November 2024.

10. AGM closed 11.45 am

We need whistleblowers. Here are 9 ways workplaces can make it safe to speak up.

How to protect the whistleblower while nurturing workers and ensuring procedures are in place

Kelly Richmond Pope
Quartz, 29 September 2023

WHISTLEBLOWING is vital to prevent and uncover corporate misconduct, including fraud, waste, discrimination, toxic work environments, and other wrongdoing. Still, becoming a whistleblower is uniquely challenging, even under the best circumstances.

Retaliation against those who report wrongdoing in the workplace remains all too common. Rather than being commended, whistleblowers are attacked and vilified. Thus, the mere thought of blowing the whistle, let alone following through, can bring about severe psychological distress.

Companies committed to whistleblowing programs can make all the difference by creating supportive work environments where whistleblowers feel protected and safe.

Psychological safety cannot be ignored

It is important that people feel they can speak up and express their concerns. Being heard is being seen. In a psychologically safe workplace, people are not full of fear and are not trying to cover their tracks to avoid being embarrassed or punished, says Harvard Business School professor Amy C. Edmondson and author of *The Fearless Organization,* who coined the phrase "team psychological safety."

Dr. Susan Kahn, business psychologist, author, and academic, amplifies that when there is a psychologically safe culture, "it means that when you're at work, you feel free to speak. You feel free to raise concerns. You feel free, no matter what your status in the organization, whatever your position, that you will be listened to, that somebody is prepared to hear you without humiliating, criticizing, or shutting you down."

Whistleblowers are more likely to come forward when they enjoy psychological safety and trust their company's commitment to ensuring their safety and well-being. When a company openly values the chance to see areas for improvement and course correction, it is less likely to view whistleblower reports as hostile or disloyal.

How to make whistleblowers feel safe to come forward

There is much a company can do to foster psychological safety in the workplace, thereby protecting whistleblowers. Best practices include:

1. **Establish a confidential reporting system.** A confidential reporting system builds a culture of trust, where people feel protected to speak up and more loyal to the company.

2. **Provide training on the company's anti-retaliation policies.** Train employees on how the company will enforce whistleblower anti-retaliation policies. The whistleblowing process benefits from transparency. Everyone must know whistleblowers will be protected from retaliation and other negative consequences.

3. **Inform employees of their legal rights.** Provide specific training to teach employees about their rights and available internal and external whistleblower protection programs. Proactively inform employees of the laws that protect whistleblowers from firing and discrimination.

4. **Provide whistleblower recognition.** Whistleblowers must be celebrated, not shamed or attacked. Celebrating whistleblowers can include instituting awards programs, highlighting whistleblowers' actions in monthly newsletters and creating financial incentive programs for whistleblowers.

5. **Follow up with whistleblowers.** Set up formal and informal mechanisms for periodically checking in.

6. **Provide financial support.** Financial support should include compensation for lost wages or other damages resulting from coming forward as a whistleblower.

7. **Provide psychological support.** This is necessary to alleviate the significant psychological stress and anxiety attendant to the whistleblowing experience. Easy access to mental health resources is vital.

8. **Track speak-up rates and retaliation cases.** Measure the effort to encourage speaking up and anti-retaliation.

9. **Involve senior leadership.** An effective whistleblower protection and anti-retaliation program requires senior leadership commitment and accountability.

Building trust and resolving issues

Companies can create workplaces where people feel comfortable voicing their concerns without fearing retaliation. Employees who feel psychologically safe to voice concerns are likelier to take advantage of their company's internal whistleblowing hotlines rather than keep quiet, take to social media, or use other external avenues.

Proactively addressing employees' fears of retaliation from whistleblowing will improve internal reporting rates and reduce the number of people needing to take their concerns public or outside the company in the first instance.

The advantages of internal whistleblowing are more than just protecting the company from public scrutiny. A company where people are encouraged to voice their concerns safely is better equipped to resolve issues. It is also a solid indicator to recruits, investors, customers, and peers that the company can be trusted.

Kelly Richmond Pope, author of *Fool Me Once,* is the Barry Jay Epstein Endowed Professor of Forensic Accounting at DePaul University in Chicago.

Making it safe for people to speak up at work

If we reward people for speaking their truth, we can create better and more productive workplaces.

Stephen Shedletzky
The Greater Good, 13 November 2023

WHEN PEOPLE are afraid that something bad will happen to them because of their decision to speak up, in most cases, they won't do it. And can we really blame them? This is, seemingly, leadership's failure to foster the type of culture that encourages and rewards people for speaking up.

Whether our experience is real or perceived—and sometimes our perception is our reality—if it feels dangerous and like we may be punished for sharing our ideas, concerns, disagreements, and mistakes, the likelihood of our speaking up decreases.

Professors Ethan Burris and Jim Detert call the process of deciding whether to speak up "voice calculus," during which people "weigh the expected success and benefits of speaking up against the risks."

There are plenty of examples where not having a speak-up culture proved disastrous, including the Boeing 737 MAX tragedies that resulted in two plane crashes and 346 lives lost—or, more recently, the Titan submersible disaster, where two former OceanGate employees separately voiced similar safety concerns about the thickness of the hull, but found their voices dismissed.

The stakes need not be life and death for employees to feel that the risk to speak simply isn't safe or worth it. And, when people choose to keep their ideas, concerns, disagreements, and mistakes to themselves, everyone loses. The bottom line, for everyone, is that organizations with speak-up cultures are safer, more innovative, more engaged, and better-performing than their peers.

So, how do you foster a speak-up culture? It starts with resisting the urge to manipulate employees—and ends with making it safe and worthwhile for them to share their truth.

The costs of manipulation

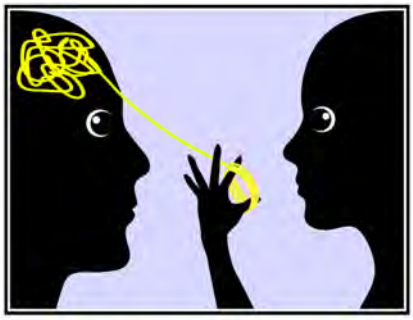
There are two psychological phenomena that affect the outcome of our voice calculus and a propensity for staying quiet: gaslighting and toxic positivity.

Gaslighting occurs when someone is manipulated by psychological means into questioning their own reality. Sounds fun, I know.

For example, someone dares to risk sharing with their leader how they feel, and their leader essentially responds with, "You're incorrect. You don't feel that way." Of course, this is a ridiculous assertion. While we can debate facts and figures, arguing that someone's feelings are invalid is quite inhumane and certainly lacks emotional intelligence.

A "gaslighter" uses four main techniques (with examples) to influence their victim:

- Reality manipulation ("that's not what happened")
- Scapegoating ("you are the problem" or "they are the problem")
- A straight-up lie ("this contract is designed to protect you")
- Coercion ("do this, or else")



Convincing others that they themselves are the problem rather than acknowledging and dealing appropriately with the very issue they are raising is a form of gaslighting. This is also abdicating the responsibility of leadership.

Toxic positivity is a more subtle cousin, if you will, of gaslighting. It's a "good vibes only" approach, where we're allowed to talk only about good things and the future—no lamenting about the past or talking about the real challenges at hand.

For example, 30% of the workforce was just laid off, and talking about it to cope and grieve is off limits: "Are you a part of the problem or do you want to be a part of the solution?," people may say.

Heedless positivity is not the same thing as grounded and realistic optimism. Toxic positivity is the belief that people should always remain positive, no matter how dire the circumstances.

Unfortunately, wishing negativity away is not a great strategy. The avoidance of those hard and real emotions is unproductive and unhealthy. Toxic positivity is dysfunctional emotional management, without the full acknowledgment of negative emotions, particularly anger and sadness. These, of course, are part of the full spectrum of human emotions.

Making space for authenticity

When organizations encourage and reward people for sharing how they truly feel and make space for expressing emotions beyond the positive ones, it can be an advantage.

As Harvard Medical School psychologist Susan David teaches us in her 2016 book, *Emotional Agility,* emotions are data that can inform us and others of what's going on. When a broader spectrum of emotions is safe and welcome within organizations, we can make better, more sound, holistic, and wise decisions.

To avoid gaslighting or toxic positivity—and, perhaps most pressingly, being fired—people turn the other cheek, put their head down, share the truth but not the whole truth, or just keep walking by. Importantly, it doesn't matter whether their fears are well-founded or not.

Again, our truth is but our perception. Our brain releases cortisol whenever we sense a threat. Cortisol is the same neurochemical that during our primal days instigated us to either head for the hills or stay and fight. While our surroundings have evolved, our neurobiology hasn't.

When we perceive a threat, our brains release cortisol—our pupils dilate and our muscles tense just as readily inside the four walls of our office or videoconference screen as they did on the plains. The only difference is that now we're worried about losing our livelihood, not about being eaten by a large cat. But it feels as critical, as if we were worried for our lives. Cortisol is, after all, designed to keep us safe. If it feels dangerous to speak up, the likelihood that we will diminishes.

So, how do leaders create an environment where people feel it's safe and worth it to speak up?

How to create a speak-up culture

They can, quite simply, encourage and reward people for sharing their truth.

When we join a team, we very quickly learn the culture and norms—what's accepted and what's not. We may hear about someone else's attempt to share an idea, feedback, concern, disagreement, or mistake. Perhaps it went well; perhaps it didn't. We may even be so bold as to contribute to a conversation. What happens next typically dictates how we, and others, will behave going forward.

Some may speak up and be encouraged and rewarded for doing so. Still, people may speak up and be ignored or, worse, punished. Some may never find out how leadership would react to what they are thinking because they do the voice calculus in their head and choose to refrain from speaking up at all. When people choose not to speak up, they tend to hold back for two reasons: fear or apathy.

Before someone chooses to speak up, they consciously or unconsciously ask themselves:

Is it safe? Do I feel there is enough psychological safety present for me to take the risk to my job, relationships, and reputation to speak up?

Is it worth it? Do I perceive that speaking up will yield a useful, positive impact? (This is what's known as "perceived impact.")

The graph above maps out the continua of fear to safety and apathy to impact. Obviously, the top-right quadrant is the sweet spot. When safety and impact are high and maintained, you likely have a healthy speak-up culture. This is not a place of fearlessness, but rather a place where people fear less.

The bottom left is a miserable place to be. I've been there, and I've seen others there, as well. It's an unhappy marriage between fear and apathy, where it feels neither safe nor worth it to speak up. Quiet quitting (putting one's head down, doing the bare minimum, waiting until something better comes along) or resignation likely happens here.

The other two quadrants are less straightforward. The top left is characterized by safety, but low impact. You may feel safe to confront a friend, colleague, or boss, but you do not believe doing so would lead to any meaningful change. Perhaps this is because of bureaucracy or a larger systemic issue, or because a personal change in habits would be highly improbable.

The final quadrant in the bottom right—low safety and high impact—is where Ed Pierson, the senior manager at Boeing working on the 737 MAX, found himself leading up to the first crash in October 2018. The cost of remaining silent was too high. This is the reason a speak-up culture is ever more important in high-stakes and potentially dangerous lines of work and environments. Pierson and others courageously risked their jobs, livelihoods, reputations, and relationships to speak up. In his case, after repeated attempts and dead ends, Pierson ultimately decided to whistleblow in December 2019, testifying before the U.S. Congress.

This was also the case for Kimberly McLear, a whistleblower who served in the U.S. Coast Guard from 2003 to 2023. As a queer Black woman with a Ph.D. and highly decorated in the Coast Guard, she was unfortunately the target of workplace bullying, psychological harassment, and intimidation.

McLear felt harassed because she brought a differing opinion and point of view; because of her gender, race, sexual orientation, and same-sex marriage; and because she became a trusted confidante across the Coast Guard. In 2016, after enduring two years of direct abuse, she made the conscious decision to speak up, "not only for [her] own survival," but also to shine a light and educate others on the injustices she felt and saw were occurring more broadly in the organization. Following her speaking up as a whistleblower, she experienced further retaliation.

Today, McLear continues to be an outspoken advocate for helping leaders and organizations create workplaces and communities where people feel they matter, belong, and can be their full, authentic, and healthiest selves.

This is not a license to share whatever we want, with whomever we want, and whenever we want. Emotional intelligence and situational awareness ought to be nurtured and expected. Comedian Craig Ferguson is credited with these brilliant questions that can form a Venn diagram: "Does it need to be said? By me? Now?"

That's the responsibility of every employee. But the special responsibility of leaders is to value the voice and input of the employees and team members, by making it both psychologically safe and worth it to speak up. To both encourage people to speak up and reward them for doing so, especially when they bring up hard things to hear. Creating such an environment is the responsibility and the advantage of leaders at every level who want to be great at leading, and who want to create a better version of humanity while they do it.

Stephen Shedletkzy is a leadership coach, speaker, and author of the book *Speak-Up Culture: When Leaders Truly Listen, People Step Up*.

Stephen Shedletkzy

Ultrarich tax dodgers are criminals, not the IRS whistleblower who exposed them

Guthrie Scrimgeour
Jacobin, October 2023

In June 2021, the investigative reporting outlet *ProPublica* began publishing "The Secret IRS Files," a series of articles analyzing a leaked cache of the wealthiest Americans' tax documents.

The series was shocking. Over the course of more than a year, it laid out in detail the methods by which the uberrich — with their armies of accountants, lawyers, and friendly politicians — rig the tax code to their benefit. In many cases, the documents revealed, billionaires pay a lower effective tax rate than their working-class employees, or pay no taxes at all.

In a functioning democracy, these revelations would spark meaningful changes in the tax code, and the person responsible for the leaks would be lauded as a hero for alerting the public to massive government dysfunction. Instead, President Joe Biden's Department of Justice, badgered by congressional Republicans, elected to prosecute the whistleblower.

After his indictment last month, former Internal Revenue Service (IRS) contractor Charles Littlejohn pleaded guilty in federal court this Thursday to disclosing tax information to two news outlets without authorization. Though the outlets aren't named, the indictment appears to hold Littlejohn responsible for the *ProPublica* leak and a separate leak of former president Donald Trump's tax returns to the *New York Times* in 2020. Court documents show that he is likely to face between eight and fourteen months in prison, though his sentence could last as long as five years.

The decision to prosecute the leaker while our sieve of a tax code remains unaddressed is disgraceful, laying bare the way our government continues to prioritize the needs of the wealthy over those of the general public.

War on whistleblowers

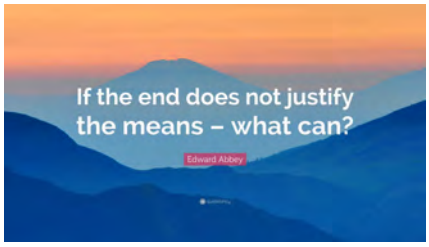
The prosecution of Littlejohn is shameful, but it isn't surprising. For the past two decades, the US government has been waging a bipartisan war on whistleblowers.

For national security leaks, it has become commonplace to prosecute whistleblowers under the Espionage Act, a World War I–era law intended to target spies who provide intel to foreign governments. Daniel Ellsberg and Anthony Russo, whose leak of the Pentagon Papers provided a vital glimpse into decades of policy failure in Vietnam, were the first whistleblowers prosecuted under the law, facing the possibility of a 115-year prison sentence.

The prosecution of leakers ramped up under former president Barack Obama's Department of Justice, which — despite coming into office promising to be the "most transparent" administration in history — used the Espionage Act against whistleblowers more than all its predecessors combined. Trump, never a fan of the free press, escalated further, prosecuting whistleblowers Reality Winner, Terry Albury, Daniel Hale, and journalist Julian Assange. (Ironically, Trump is now himself being prosecuted under the Espionage Act for his mishandling of classified documents.)

At Littlejohn's plea hearing Thursday, US District Court Judge Ana Reyes admonished the defendant's actions. "If there's anyone out there telling you it's acceptable because the ends justify the means and they think the end is appropriate, they are wrong," she told the court.

While Littlejohn is not being prosecuted under the Espionage Act, Reyes's statement echoes the logic used in Espionage Act cases. During Ellsberg's trial, he was forbidden from using the defense that he leaked the Pentagon Papers in the public interest. In the court's eyes, the argument was irrelevant — the ends didn't justify the means.



It's this same reasoning that forces whistleblowers to reach plea deals in Espionage Act cases today instead of making their case at trial. Chelsea Manning, whose leaks revealed the dark reality of US violence against civilians during the wars in Iraq and Afghanistan, was forced to plead guilty to Espionage Act charges. She ultimately spent more than seven years in prison without having a real chance to mount a defense. Edward Snowden, whose leaks showed the American public that its government was conducting an insidious and illegal surveillance program, remains exiled in Russia. Snowden has said that, if able to

make the case that his leaks were in the public interest, he would return to the United States and stand trial. But, in the eyes of the law, the ends don't justify the means.

Before his death this June, Ellsberg continued to advocate that whistleblowers should be allowed to defend themselves by arguing that they acted in the public interest. "We need more whistleblowers, not fewer," he said.

Of course, there are times when the ends do justify the means. The actions of whistleblowers like Ellsberg, Snowden, Manning, and Littlejohn have created a more informed American public, better able to participate in the democratic process. Many of these leaks have led to positive policy changes. And many disastrous policies could have been prevented if more people had felt comfortable blowing the whistle without fear of draconian prison sentences.

Private taxes, public consequences

We don't know anything about the motivations of Charles Littlejohn. He hasn't made a public statement since his indictment, and his attorney Lisa Manning declined to comment for this article. Considering how the establishment media raked Snowden, Manning, Assange, and even Ellsberg over the coals in the wake of their leaks, it makes sense that he would want to keep a low profile. Regardless of his intentions, it is indisputable that the leaks were in the public interest.

"The Secret IRS Files" featured many stunning and appalling revelations — among them that Kentucky Derby horse owners managed to take a combined $600 million in tax write-offs on their racing operations, that the billionaire responsible for the longest-running oil spill in history used compelled cleanup efforts to reduce her tax bill to nothing, and that an LA Clippers stadium worker making $45,000 a year paid taxes at a higher effective rate than team owner Steve Ballmer, to name a few.

Most importantly, the series exposed the way money operates in our political system. Of course, it's no secret that money can buy politicians and favorable policies, but the leak pulled back the curtain to show how political spending can result in direct financial benefits for the superrich. It revealed how billionaires can essentially use our democracy as an investment vehicle — one that can be quite lucrative.

Take billionaire Ken Griffin's campaign against a 2022 ballot proposal that would have increased taxes by 3 percent on the wealthiest Illinois residents. Griffin — yes, the one portrayed by Nick Offerman in *Dumb Money* who may have colluded with the Robinhood platform to screw over Reddit Gamestop investors — pumped $54 million into deceptive advertisements against the proposal. Those efforts were successful, and the measure was voted down at the ballot box. The leaked documents showed that Griffin may have saved as much as $80 million in a single year as a result of the tax being shut down, meaning that he almost immediately made back his investment with interest. (Griffin has now become a force pushing for a harsh response to the leak, filing a lawsuit against the IRS over the incident.)

Or take the case of Republican Senator Ron Johnson.

Senator Ron Johnson

He dramatically refused to vote on Donald Trump's tax cut package in 2017 until the bill provided additional breaks for a class of businesses called "pass-through" companies, so named because profits pass through to the owners. The holdout was successful, and when the bill passed it included a juiced-up tax break for these businesses.

Among the biggest beneficiaries of the pass-through tax changes were, unsurprisingly, some of Johnson's top financial backers. Dick and Liz Uihlein of the pass-through company Uline and roofing billionaire Diane Hendricks contributed about $20 million to groups that backed Johnson's reelection campaign in 2016. The IRS documents show that the changes Johnson pushed for are expected to deliver the trio more than half a billion dollars over the span of the program.

While the information contained in Littlejohn's leaks may be less visceral than some of the revelations from military whistleblowers, they reveal a harm that is no less relevant to the public.

Budgets are a zero-sum game, and any taxes that billionaires avoid must be made up for by cutting social services or hiking taxes on the working class. The defeat of the Illinois ballot proposal led to austerity measures, hurting already struggling public schools. According to the Center on Budget and Policy Priorities, the pass-through deduction costs the government $50 billion a year — benefits that go overwhelmingly to the wealthy — while providing "no discernible economic upside." Meanwhile, Congress scrambles to save pennies by booting people off welfare rolls.

Some have argued that, in leaking the tax returns, Littlejohn violated the privacy rights of billionaires. But the tax machinations of the superrich have public consequences, and there is no legitimate reason to keep them private, let alone imprison those who reveal them.

Costly witch hunt of NHS whistleblowers

The government is encouraging Hospital Trusts to spend huge sums on legal cases against NHS whistleblowers on patient safety

Lucette Davies
Counterfire, 4 November 2023

IT IS A NATIONAL DISGRACE that while our healthcare system falls apart, NHS Trusts are employing top barristers to silence whistleblowers. It is vital people understand the scale of the problem.

Our politicians claim there is not enough money to fund fair pay for clinicians. Yet at the same time, they have given NHS trusts access to unlimited funds to fight clinicians at employment tribunals. Staggering numbers of clinicians have had to go to tribunals to fight for their jobs after speaking up about patient safety.

Patients and carers alike are tormented by the struggles of accessing care from a broken system. Clinicians are tormented by understaffing, overwork, real-term pay cuts and bullying by management. Many describe being unable to deliver a standard of care, which they know their patients need, as a moral injury. The general population must now be given accurate information about what is happening. And they must act on this and join the fight to see our NHS restored.

NHS superhero street art
in Brockley, South London

Dr Mukherjee is a psychiatrist in the NHS currently going through an employment tribunal because he spoke out about patient safety. He is a member of a group of around 120 fellow whistleblowing clinicians who are all facing employment tribunals because they have raised concerns about patient safety. And in turn, have faced persecution and detriments.

Doctors have a legal obligation to draw attention to any shortcomings in services that would impact on patient safety and care standards ("duty of candour"). However, actions taken against Dr Mukherjee have led him to suffer from stress-related illnesses.

The Trust concerned has threatened that if he loses his employment tribunal, they will seek to recover their legal costs from him. These currently stand at around £90,000. He has described how this has affected him professionally. He avoids interacting with anyone at work, maintains a low profile, and only takes temporary jobs.

How can we expect a doctor to be able to rise to the challenge of caring for our health, when they are being persecuted like this for fulfilling their legal obligations? The duty of candour is vital for patient safety, if failings in services are to be addressed. Tragically, after decades of successive governments steadily dismantling the NHS behind the scenes, service failings are now widespread. And lives are being lost as a result.

Whistleblowing in the NHS resulted in the conviction of Harold Shipman, and helped uncover the Mid-Staffs scandal. More recently, whistleblowing doctors were speaking up about their concerns regarding Lucy Letby. The fact that in the Lucy Letby case those doctors were initially ignored demonstrates the appalling consequences of ignoring whistleblowers in healthcare.

Freedom to speak up

In 2015, Robert Francis QC published his Freedom to Speak Up Review following the inquiry into the Mid-Staffs scandal. This led to Freedom to Speak Up Guardians being appointed, whose role it is to champion the rights of whistleblowers in our NHS. Since the National Guardian's Office started keeping records in 2017, Freedom to Speak Up Guardians have handled 75,000 cases. And 20,000 of those were in 2022.

Dr Mukherjee believes that the number of clinicians now being affected is rising. He also believes that the system of "Freedom to Speak Up Guardians" is not working. He has said that: "They are often not independent and appear to be working closely with senior NHS management against whom concerns may be raised."

He also believes that the people at the head of the Trusts are acting upon the wishes of our politicians. The now nearly complete dismantling of our NHS has involved a staggering level of public deception. Politicians have a vested interest in keeping us in the dark about how they have been privatising our healthcare service by stealth.

Politicians, aided by a complicit media, have fed the public with propaganda about their actions regarding our NHS for decades. Endless "reforms," policy changes, and restructuring have been undermining our NHS. Yet still our political parties and electoral candidates use declarations of support for the NHS in their campaign materials. Our NHS is a vote winner, so they need to keep us in the dark to maintain their positions.

However, clinicians at the coal face can see exactly what is going on in our healthcare services. No amount of propaganda can kid them that things are going well. Some may be tempted to go with the flow of privatisation. However, many still hold a firm belief in the principles of universal healthcare free at the point of need. Their voices threaten to undermine the scandalous level of public deception about the politics of our healthcare service. They should be commended for their actions when they speak up, but instead it seems many end up in employment tribunals.

Clinicians who raise concerns within the NHS are often defeated by the employment tribunal system. Dr Mukherjee said: "The system has many deficiencies such as the lack of any court records or transcripts of hearings." He said that he believes, "the whole justice system is rigged against us." The emotional pressure on doctors is now increasing exponentially as Trusts threaten that they will seek to recover their legal costs if clinicians lose their cases. Coupled with patients who vent their frustrations on doctors about waiting times, it is staggering that more have not left the service.

Dr Mukherjee describes the doctors' union, the BMA, as "opportunistic" and as only getting involved in a few very high-profile cases, when they want to demonstrate they are on the side of doctors. The media likewise has opted to only cover a few very prominent cases of whistleblowing doctors. He believes it is vital the public are told about the scale of the problem. And also made aware of the vast amount of

public money getting spent by Trusts on persecuting clinicians like himself.

Persecution of whistleblowers

Despite many clinicians representing themselves at tribunals, NHS trusts are employing the most expensive barristers. Dr Mukherjee has said they are employed to "Humiliate the clinicians and assassinate their characters in tribunal courts."

The NHS has a long tradition of persecuting and ignoring whistleblowers. Dr Raj Mattu was a doctor who raised concerns about patient safety in 1998 and was then subjected to a twelve-year witch hunt. The hospital trust made more than 200 allegations against him. His whistleblowing legal case was upheld by an employment tribunal, but only after the NHS trust concerned had spent £10m on the case. Even NHS England admits its staff are too afraid to speak up.

Raj Mattu

But now more than ever, we desperately need to hear the voices of concerned clinicians. And if our NHS is to stand a chance of retaining clinicians, this persecution must stop.

Privatisation alone is a scandalous waste of public money, increasing inefficiency while throwing public money away for the profits of large corporations. The politicians who wish to see Britain with an insurance-based system want it to fail. They want voters to fall out of love with their precious NHS. They just don't want us to understand why it is failing. This is because they can then present privatisation as the solution to its failures, as opposed to the cause. The more they underfund the service, the quicker it will fail.

We therefore need to be extremely concerned about the way in which NHS Trusts have unrestricted access to public money when they start hiring top barristers to fight clinicians in employment tribunals. Dr Chris Day spoke out about patient safety when working as a junior doctor in an ITU ward. So far over £700,000 has been spent on persecuting him in a case that is still ongoing.

Barristers employed to persecute NHS whistleblowers can charge up to £525 per hour. Barristers in addition have the support of a legal team of solicitors, legal directors and paralegals, each of which have their own hourly rate to invoice the NHS.

When funding is needed to improve our NHS, politicians will often find a reason why it has to be denied. However, when actions are needed to assist the destruction of our NHS, funding seems to be readily available.

The emotional and financial pressures placed on NHS whistleblowers has to stop. Doctors are calling on NHS England to send Trusts a directive to stop spending public money on persecuting clinicians in this way. Judicial mediation is a free service offered by Employment Tribunals which would also reduce the psychological stress on whistleblowers. Clinicians are demanding all NHS Trusts stop employment tribunals and use this free mediation service.

Please join with the doctors who are there for us when we need them. Add your name to the petition to transfer all cases to mediation. Please sign this petition and share it widely with your contacts. Help raise the alarm before we end up with a US style healthcare system.

Doctors are also demanding that NHS England calls an inquiry into the wastage of public money so far on employment tribunals concerning whistleblowers. Please write to your MP and make this demand.

Access to quality healthcare for all is desperately needed if this country is to recover from the dire political and economic mess it is currently in. We must fight for our NHS; our lives and our children's lives depend on it. We must demand our NHS is reinstated. Please, please raise the alarm.

Lucette Davies is a People's Assembly activist, member of Counterfire and founder of East Sussex Save the NHS.

Harassment, intimidation and sabotage: can more be done to protect whistleblowers?

Davina Tham

Channel News Asia, 15 October 2023

SINGAPORE: When Mr Pav Gill first found evidence of fraud at his employer, the German payments processor Wirecard, he set an investigation in motion from his office in Singapore.

Then the company's head of legal for Asia-Pacific, Mr Gill was determined to remove the rot from within, confident he was just doing his job properly.

But senior executives thought differently. They blocked the investigation and unleashed a barrage of harassment and intimidation on Mr Gill, from shouting at him in the office to threats to investigate him instead.

At one point, even his life appeared to be in danger. Management tried to send him on a business trip to Indonesia. Mr Gill got a tip-off that he would not return home if he went. He did not go on the trip.

After three months of management "making (his) life hell", Mr Gill left Wirecard and started interviewing for a new job. But the persecution did not stop there.

At some job interviews, he would be questioned about why he had left Wirecard instead of about his skills and experience.

Those hirers were friendly to Wirecard. They were trying to bait him into disclosures that would breach his separation agreement with his former employer, giving it a basis to go after him, said Mr Gill.

Pushed into a corner, Mr Gill's mother got in touch with a journalist,

and he took his tranche of evidence to the *Financial Times*.

In 2019, the British newspaper started publishing reports on Wirecard's illegal activities, implicating senior executives in a series of suspicious transactions at the company.

Authorities sat up and took notice. Investigations culminated in Wirecard's collapse in 2020, after it failed to account for €1.9 billion (US$2 billion) in missing funds.

Mr Gill, who went public with his identity as the Wirecard whistleblower in 2021, told CNA that his experience is a rare example of successful whistleblowing, where the perpetrators face criminal prosecution.

"The Germans, for example, they didn't understand how a mum-and-son combo living in a subsidised housing estate in small Singapore could successfully expose a powerful €24 billion company."

But it came at a huge personal cost to him and his mother, who suffered a stroke from the stress of the ordeal. It is also a reminder that informants have reason to fear retaliation and need protection from reprisal.


Pav Gill

Singapore does not have universal whistleblower legislation that protects informants, unlike other economies such as Malaysia, Japan, the United Kingdom and the European Union.

Recent revelations about the alleged abuse of children at a preschool and a billion-dollar transnational money laundering case have raised questions about how wrongdoing connected to the workplace is reported here.

In both of those cases, tip-offs led to breakthroughs.

The alleged rough handling of preschoolers at a Kinderland branch was exposed by a whistleblower who taught there at the time. She filmed videos of the incidents, which were eventually circulated online.

The money laundering suspects were identified through intelligence including suspicious transaction reports — a reporting tool required for professionals in industries like real estate, banking and law.

"The question is, if you have good whistleblowing systems, I think a lot of things will be uncovered much earlier," said corporate governance expert Professor Mak Yuen Teen.

A lot of corporate wrongdoing goes undiscovered because of the lack of whistleblower protection, said Prof Mak, who teaches at the National University of Singapore Business School.

Asked if corporate wrongdoing might be more common than thought in Singapore, he said: "Absolutely, I have no doubt at all."

"David versus Goliath"

Despite not being required to by law, many private multinational corporations in Singapore as well as government agencies and non-profit organisations have whistleblower policies in place.

But in practice, Prof Mak said he is "not confident" that whistleblower policies are generally effective. He cited his own experience sending whistleblower reports to two companies in the course of his work on corporate governance.

Both companies — one in Singapore and one in Malaysia — did not acknowledge his complaints even though he identified himself and gave "substantial documentation."

"You take the trouble to blow the whistle and then you find that it goes into this black hole, and they don't even bother responding," he said.

He has also been on the other side, as a board member of a non-profit organisation that received a whistleblower report.

The board responded by initiating forensic investigations and placing the CEO and COO on leave, and fired the officers after the allegations proved true.

Prof Mak said the effectiveness of whistleblower policy ultimately depends on individual members of an organisation's board, especially its independent directors.

But some reports never even make it that far. In the Kinderland case, the whistleblower told the preschool's principal how the students were being treated, but felt she was not taken seriously.

According to her, the principal's response was that the implicated teacher — who has since been charged with ill-treating a child — had been with the school for years.

The whistleblower ended up leaving the preschool because she did not want to be part of the culture there.

"Before I resigned, I already voiced it out, but no action was taken. That's why I chose to leave," she told CNA.

If a company does not take a report seriously or blocks investigations internally, external options for the whistleblower can be limited, as Mr Gill experienced.

In the case of Wirecard, Mr Gill decided not to go straight to local or German regulators and authorities with the information he had.

The payments processor did not need a licence from the Monetary Authority of Singapore (MAS) to operate in the country at the time, and the fraud seemed to be happening on a global scale. In Germany, the firm was "well protected."

Going to the police was a "scary" option because the tables could turn, and he could be questioned about the legality of his actions and his motives instead.

"Technically every whistleblower has committed an offence by virtue of taking confidential (information)," said Mr Gill, while noting that it may not be in the public interest to enforce this.

In the end, the Singapore Police Force was the only enforcement agency across the jurisdictions involved to act

"right away" when the news reports came out, he said.

The regulator has since penalised three banks and an insurer, and seven people have been charged in relation to the case in Singapore.

But at the time of deciding whether to go to authorities, Mr Gill was on guard against unscrupulous tactics by Wirecard. "If a company is already faking contracts and forging documents, there is zero to prevent them from forging things that you didn't do either."

Whistleblowing is always a "David versus Goliath" scenario, he said. "With the resources companies have, they can launch a legal case against you, they can launch all kinds of offensives against you.

"So that's why it's very dangerous, because whistleblowers don't know who to trust, and they don't know who will weaponise the information that they have and use it to their own advantage."

In the end, he felt that the only way to "shock everyone into doing something" across multiple jurisdictions was to give the scoop to a reputable international newspaper.

A patchwork of legislation

Around the world, whistleblowing has a track record of protecting companies from errant employees.

A 2022 global study by the Association of Certified Fraud Examiners examined more than 2,000 cases of fraud committed by individuals against the organisations that employ them, totalling losses of more than US$3.6 billion.

It found that 42 per cent of such fraud was initially detected from tip-offs, compared to 16 per cent detected through internal audit. More than half of those tip-offs came from employees themselves.

In Singapore, whistleblowers are protected through pieces of legislation targeted at specific groups of informants or types of information, said Mr Abdul Jabbar, head of the corporate and transactional group at Rajah & Tann Singapore.

For example, the Prevention of Corruption Act protects those who report corruption. The Workplace Safety and Health Act protects those who report safety breaches and hazards in a work environment.

Abdul Jabbar

The Companies Act protects auditors from defamation suits and from liability for reporting fraud in good faith. Separate legislation covers specific whistleblowing on drug trafficking, terrorism financing, competition matters and income tax, said Mr Jabbar.

Some regulators also have rules. The Singapore Exchange Regulation (SGX RegCo) requires listed companies to maintain a whistleblowing policy, and to explain how they maintain independent oversight of it and protect whistleblowers' identities.

MAS requires financial institutions to establish formal whistleblowing programmes that include procedures to ensure anonymity and adequate protection of employees who raise concerns.

But this still leaves gaps.

"The current patchwork of legislation in Singapore is inadequate to address several segments of whistleblowers," said Mr Jabbar, who proceeded to point them out.

The SGX RegCo and MAS guidelines do not have the force of law and apply only to listed companies and financial institutions respectively. This leaves out a big group of employers such as private companies and government agencies.

Those who flag general wrongdoing in the workplace — which could include fraud, forgery, misappropriation of company funds, collusion and theft — are not protected under the scope of reporting on corruption or workplace safety.

There is also no specific legislation protecting those who report on environmental crimes.

Where there is protection, it is inconsistent and varies by circumstance, said Mr Jabbar. For example, some laws protect from retaliation while others afford anonymity.

There are also no express provisions that reduce the criminal sentences of whistleblowers who participated in the illegal activity they reported. Sentences are left largely to the discretion of the courts.

"One clear law that gives comprehensive protection on all fronts including against harassment, prosecution (and) civil actions like defamation will be helpful," said the lawyer.

Mandatory reporting obligations are another aspect of legislation affecting whistleblowers. In certain situations, individuals and corporations must report information they possess, or be liable for an offence.

Such obligations can be found in Singapore's Criminal Procedure Code, legislation to suppress terrorism financing and anti-money laundering legislation, said Ms Celeste Ang, principal at Baker McKenzie Wong & Leow.

Under anti-money laundering legislation, a person with reason to suspect that a property is connected to an offence under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act must disclose the information.

The obligation applies if the person came across the information in the course of their employment, and is also applicable to companies. There are penalties, including a fine and a jail term of up to three years, for breaching the obligation.

The same Act provides that the information and the identity of the informant are not to be disclosed.

Under the Criminal Procedure Code, there is an obligation to report information about the commission of or intention to commit an "arrestable offence." This covers a wide range of acts, from murder and assault to extortion and robbery.

Acts of harassment, bullying and discrimination do not fall under the reporting obligation, Ms Ang noted.

Yet in Asia-Pacific, such acts dominate whistleblower complaints, making up 72 per cent of complaints in a survey of Japan, mainland China, Hong Kong, Singapore and Australia published by Baker McKenzie last year.

Ms Ang said it is important to have legislation that protects informants in the workplace given the retaliation they can face.

This retaliation can include dismissal from their jobs, disadvantageous changes to their positions or duties, emotional distress and difficulties being hired elsewhere if they are seen as a "known informer."

Culture and attitudes, not just legislation

Asked why Singapore does not yet have universal whistleblower legislation, experts pointed to the balancing act that Singapore plays between regulation and the ease of doing business.

"We have always catered more towards the business interests than the interests of investors, consumers, employees and other stakeholders," said Prof Mak.

But introducing universal whistleblower legislation will not be enough, experts say. Corporate culture and social attitudes towards whistleblowing will also need to shift.

Prof Mak has seen the bad rep that whistleblowers get. When the non-profit board he was on wanted to rehire their whistleblower, the person did not want to return despite a good performance review.

The former employee thought his colleagues might know he was the informant. And while most members of the board were in favour of rehiring, some showed hesitation.

Singapore has so far preferred to encourage good governance through self-reporting and accounting oversight, said Mr Jabbar.

"Most of our organisations utilise an internal model of whistleblowing which focuses on internal resolution rather than external reporting. Such a model is influenced by our Asian culture, which could view whistleblowing negatively."

He said that companies should in fact treat whistleblowers as an asset.

"This is because employees who sound the alarm about bad practices early can help to prevent an organisation's reputation from being damaged through negative publicity, regulatory investigations or fines."

Mr Gill echoed this. "If I saw a lady getting robbed, and I went all in and stopped that crime, and I reported it … everybody thinks I'm a hero."

This changes when the robber is your own employer. "Culturally, it's very complex" because of the association with "biting the hand that feeds," he said.

"But the difference is you're actually not biting the hand that feeds, you're trying to guide it, because the hand's currently soiled."

More and more, whistleblower protection also makes business sense on an international scale.

Strong whistleblowing policies and legislation are becoming important considerations by multinational companies deciding where to do business, said Mr Jabbar.

Governments around the world increasingly view whistleblowing as a way to improve regulatory compliance and accountability, and have legislation guaranteeing whistleblower protection, he said.

"This, coupled with comprehensive laws on anti-corruption, will help enhance Singapore's reputation as a safe and corruption-free jurisdiction, helping to attract further investments into Singapore."

Making whistleblowing less painful

By protecting informants more comprehensively, universal whistleblowing legislation would make it "less painful" for people to come forward with information, said Prof Mak.

Professor Mak Yuen Teen

One place for this could be Singapore's new workplace fairness law, which is expected to be ready in 2024. Lawyers pointed CNA to the recommendations made by the tripartite committee on workplace fairness.

The recommendations, which have been accepted by the government, include prohibiting retaliation against those who report workplace discrimination or harassment.

The committee also recommended that employers be required to have "grievance handling" processes, and to protect the identities of people who report workplace discrimination or harassment, where possible.

To accompany this, Singapore could also have laws that impose stronger obligations on companies to ensure that whistleblower policies work.

Prof Mak cited Malaysia, which imposes corporate liability on a company and personal liability on its senior management if a person associated with the company commits corruption.

Organisational culture can also change if employers give recognition to whistleblowers and start rewarding ethical behaviour in the company, he suggested.

For Mr Gill, his journey at Wirecard combined with his experience as a senior lawyer led him to create his new start-up Confide, a whistleblowing and risk management platform.

It allows organisations to provide staff, directors and vendors with a secure and anonymous whistleblowing platform to report any concerns.

The platform also has built-in triggers to move the investigation along while educating both the reporting party and case manager along the way.

Mr Gill may have been silenced inside Wirecard, but he said exposing what was happening from the outside has given him an "even louder voice" in the end.

"As long as you have truth on your side, then there's really nothing to fear, right?" he said.

"Because the people that should be fearing are those that are committing crimes, not those that are exposing them."

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Anonymous contributions

Whistleblowers often suffer reprisals, so often it's better to be a "confidential informant," otherwise known as a public interest leaker. By remaining anonymous, you can expose problems with relative safety, stay on the job, continue to collect information and, if needed, again communicate with journalists, activists or others on the outside who can speak out without as much danger to themselves.

If you want to write for *The Whistle* and remain anonymous, that's fine. Be careful. Because electronic communications can be monitored, it's better not to use email or telephone. One secure option is to put a USB in the post to me. For a simple introduction, see "Leaking in the public interest," https://bit.ly/3GYMibN.

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