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

The Whistle

No. 119, July 2024

Newsletter of Whistleblowers Australia (ISSN 2205-0299)

Study pages 2–7 and then put these pictures into two separate groups.

CDPP
Australia's Federal Prosecution Service

McBride sentencing commentary

Dark day for democracy as McBride imprisoned

Human Rights Law Centre
14 May 2024

CIVIL SOCIETY GROUPS have expressed grave concern and alarm after military whistleblower David McBride was sentenced to almost six years' imprisonment in the ACT Supreme Court on Tuesday.

McBride leaked documents to the ABC that formed the basis for the broadcaster's landmark Afghan Files reporting, which showed credible evidence of war crimes committed by Australian forces in Afghanistan. The reporting was subsequently confirmed by the Brereton Inquiry.

McBride had argued he was immune from prosecution under federal whistleblowing law, but withdrew that defence in 2022. He then argued that the offences he was charged under contained a public interest element; after that was rejected by the trial judge, he pleaded guilty in November 2023.

On Tuesday, McBride was given a sentence of five years and eight months, with a non-parole period of two years and three months.

David McBride and friend

McBride is the first whistleblower to be imprisoned in recent memory in Australia. Witness K, who exposed Australia's spying against Timor-Leste, was given a suspended sentence; the prosecution of his lawyer, Bernard Collaery, was dropped by the Attorney-General, Mark Dreyfus KC, after the Albanese Government took office. Tax office whistleblower Richard Boyle will face trial in September.

Whistleblowers play a vital democratic role by exposing government wrongdoing and corporate misdeeds. The civil society groups expressed concern that future whistleblowers will stay silent if they are worried about being prosecuted, and wrongdoing will stay hidden as a result.

Kieran Pender, Acting Legal Director at the Human Rights Law Centre:
"This is a dark day for Australian democracy. The imprisonment of a whistleblower will have a grave chilling effect on potential truth-tellers. Our democracy suffers when people can't speak up about potential wrongdoing. There is no public interest in prosecuting whistleblowers."

Rawan Arraf, Executive Director at the Australian Centre for International Justice:
"It is a travesty that the first person imprisoned in relation to Australia's war crimes in Afghanistan is not a war criminal but a whistleblower — the person who leaked documents to the ABC that enabled important public interest journalism. The case has significantly undermined Australia's commitment to implementing the findings of the Brereton Inquiry."

Peter Greste, Executive Director at the Alliance for Journalists' Freedom:
"Press freedom relies on protections for journalists and their sources. Australia recently dropped to 39th on the global press freedom index, and it is cases like this that undermine the freedom of the press in our country. As someone who was wrongly imprisoned for my journalism in Egypt, I am outraged about David McBride's sentence on this sad day for Australia."

Rex Patrick, former Senator and founder of the Whistleblower Justice Fund:
"The Albanese government has failed in its commitment to protecting whistleblowers. This prosecution began under the Coalition government but it has continued under this one. Mark Dreyfus should hang his head in shame — a whistleblower is going to jail on his watch, when he had the power to stop this injustice."

Mark Dreyfus

Clancy Moore, Executive Director at Transparency International Australia:
"Whistleblowers make Australia a better place. But recent whistleblower prosecutions in Australia have underscored significant failings in our whistleblower protection framework. It is incumbent on the Albanese government to act now with comprehensive law reform and the establishment of a whistleblower protection authority to ensure no more whistleblowers face prosecution."

Professor AJ Brown AM, Griffith University and Chair at Transparency International Australia:
"This outcome confirms how broken, and badly implemented, our federal whistleblowing laws are. Despite the illusion of justice, David McBride never got his fair day in court, because his internal disclosures about political mismanagement of the Afghan campaign were never properly handled, and the federal government then made it impossible for him to properly raise this in court, in his own defence. Reform is needed to ensure this kind of disastrous travesty can never happen again."

Jeff Morris OAM, banking whistleblower:
"Our nation's whistleblower laws are a legal quagmire and fail to protect people who are risking everything to reveal the truth about wrongdoing. Rather than encouraging brave truth-telling in response to wrongdoing, our country imprisons the truth-teller. It is a travesty."

David McBride sentenced to prison

Michael West
Michael West Media, 14 May 2024

THIS IS A MOMENTOUS DAY for the system of justice in Australia. David McBride, the Afghan war crimes whistleblower has been packed off to prison for 5 years and 8 months — a non-parole period of 27 months.

He endangered no lives. He was not involved in the murder of 39 Afghan civilians by the Army. Its generals remain decorated, off scot free. Army command and Defence chiefs have taken no responsibility.

McBride had complained through the requisite Army channels but his complaints about proper legal process fell upon deaf ears. This is essentially an administrative story where a lawyer saw failure in legal process, was rebuffed when he tried to go through the right channels, and eventually went to the press to reveal the failure. Then had his life destroyed.

David was charged with stealing documents and 'communicating' them to journalists. He stole them as an act of public duty, he said at his sentencing hearing, in the belief that he would be vindicated for acting in the public interest.

What a double standard we face. Big 4 consultancy PwC stole secret govt documents. PwC partners were not charged with stealing documents. The firm stole them for personal profit for the partners. Who is the traitor? Who is the enemy of the state? The whistleblower acting from public duty, or the PwC cabal acting for personal profit?

PwC stole these secret government documents — while working confidentially with the government for large consultancy fees, gave them to foreign MNC companies to rip off Australia to the tune of hundreds of millions of dollars in tax, refused to comply with the demands of Australia's Parliament to release information — and after a year of rough publicity, has now been rewarded by going back into government consulting.

McBride, on the other hand, has spent five years awaiting the hangman's noose. He has done his time already. Now a family is deprived of a father.

The case is likely to be appealed as there are important precedents set by J David Mossop's decision last November. The appeal is likely to be on grounds that this guilty decision was too narrow and would only conceal war crimes in future.

Does an army lawyer have a duty to simply obey orders or a higher duty to justice and the public interest? The Nuremberg trials found that "I was just obeying orders" was not an adequate defence.

Afghan war crimes whistleblower David McBride says the latter — public interest and truth should prevail. That's why, he says, he leaked sensitive information to the media about the carriage of legal affairs in the Defence Force.

The leaks led to the ABC's Afghan files story, and the Brereton Inquiry later found 39 Afghans were illegally killed during the war. Those responsible have never been prosecuted, and the Army command has not taken responsibility. Rather McBride, the whistleblower, has been prosecuted.

But David McBride was never given the chance to argue his case as Justice Mossop struck out his public interest defence late last year. McBride suddenly had no case to present and was compelled to plead guilty, and now he is off to jail.

Yet it is not only David McBride on trial, it is the system of justice.

What kind of justice is it where a whistleblower is tried, yet all of his superiors, the decorated generals and army command, get off scot free for Australia's war crimes in Afghanistan?

What kind of justice is it where McBride is denied the opportunity to put his case in an open court of law, being forced rather to plead guilty to government charges but with no resort to the most basic legal right of pleading his case?

And what kind of justice is it that allows a whistleblower to be tried and convicted while the actual war crimes go un-prosecuted, while dozens of incidents go entirely unpunished, untested in court?

What kind of justice is it where an extravagant defamation circus of Ben Roberts-Smith, a $40m circus of prancing silks and media titans — a civil trial — spilt daily evidence of war crimes, yet it is the whistleblower who faces the criminal proceedings?

What kind of justice is it where Defence can outsource its SAS black ops to a secretive private operator, Omni Executive, while an employee of the state trying to expose administrative failures can face criminal trial?

Postscript: The Tax Office hit Lendlease this week with a demand for $112m for its 'double-dipping' tax scam — a billion-dollar fraud. The whistleblower, former tax lawyer Tony Watson, remains in limbo, fighting to keep his home. Australia needs whistleblower protections that work.

The jailing of David McBride is a dark day for democracy and press freedom in Australia

Kieran Pender and Peter Greste
The Guardian, 14 May 2024

DOES IT REALLY make our country a better place to imprison a whistleblower whose actions led to public interest reporting on war crimes in Afghanistan?

What does it say about our democracy that the first person imprisoned in relation to war crimes committed by Australian forces in Afghanistan is not a war criminal, but a whistleblower?

What message does it send to prospective whistleblowers, people who might speak up because they see wrongdoing and corruption, when the source for vital public interest reporting by our national broadcaster, the ABC's Afghan Files, is sent to jail for almost six years?

And what does it say about the Albanese government — who refused to drop McBride's case and instead shrouded it in secrecy, despite admitting Australia's whistleblower protection laws were broken?

The sentencing of military whistleblower David McBride on Tuesday to a

substantial term of imprisonment brings to an end a sorry saga that, together with other recent whistleblower prosecutions, has scarred Australia's democracy. Today is a dark day, significantly undermining press freedom and whistleblower protections in this country.

McBride, a military lawyer, served two tours in Afghanistan. In an affidavit, he explained that "Afghan civilians were being murdered and Australian military leaders were at the very least turning the other way and at worst tacitly approving this behaviour … At the same time, soldiers were being improperly prosecuted as a smokescreen to cover [leadership's] inaction and failure to hold reprehensible conduct to account."

After growing unsatisfied with efforts to raise concerns internally, McBride contacted several journalists — ultimately giving numerous documents to the ABC, which formed the basis for the Afghan Files. He was arrested in 2018 and has faced prosecution ever since. His long court battle culminated on Tuesday, with a prison term of five years and eight months (he can seek parole after 25 months).

McBride may be the first Australian whistleblower to be imprisoned in living memory, although he is not the only one to face persecution. Witness K and Bernard Collaery helped expose Australia's immoral espionage against Timor-Leste; K was given a suspended sentence in 2021, while Collaery's case only ended when the attorney general, Mark Dreyfus, intervened. Troy Stolz blew the whistle on anti-money laundering failures at ClubsNSW; he was sued and almost bankrupted. And research shows as many as eight in 10 whistleblowers face some form of retaliation in their workplace.

These prosecutions are the canary in the coalmine: Australia's transparency and integrity framework is badly broken. It is not for nothing that Australia slipped to 39th in the world press freedom index earlier this month. We need urgent whistleblowing reform and the establishment of a whistleblower protection authority (as Labor promised while in opposition in 2019). We need to wind back draconian secrecy offences that make Australia one of the most secretive democracies in the world. We need to protect public interest journalism through a media freedom act, and underpin it all with a federal human rights act.

In his reasons for sentencing McBride to such a lengthy time behind bars, Justice David Mossop dwelled on the need for deterrence — to stop people like McBride speaking up in the future. On one hand that was orthodox enough: deterrence is a long-established principle of criminal law sentencing.

But deterrence in this context has a dual meaning. This case, and others like it, have had an enormous deterrent effect on whistleblowers around Australia. The decision to imprison McBride amplifies that effect. Wrongdoing will stay hidden as a result; public interest journalism will go unwritten.

David Mossop

It may be Mossop's job to consider deterring future unlawful conduct; but it is very much the Albanese government's job to address the enormous damage dealt to our democracy by the war against whistleblowers in recent years. Prospective truth-tellers feel deterred, and rightly so. We all suffer as a result.

Outside court on Tuesday morning, speaking at a rally of hardy supporters braving the Canberra cold, was Jeff Morris. A former Commonwealth Bank employee, Morris was one of a number of whistleblowers who spoke up about wrongdoing in our financial institutions to journalists last decade. Millions of Australians are better off as a result.

Morris is a salient example of the power of whistleblowing and investigative journalism. Will the next Jeff Morris speak up, knowing what has happened to McBride? What else won't we know if whistleblowers instead choose to stay silent?

For all the complexity that has surrounded this prosecution, at its core are some simple facts. David McBride leaked documents to the national broadcaster that led to groundbreaking investigative reporting on Australia's war crimes in Afghanistan. That was indisputably in the public interest. Given the state of Australia's whistleblowing and press freedom laws, McBride was never given the opportunity to prove the public interest in his actions. And so instead he goes to jail.

Can anyone say that makes Australia a better place?

Kieran Pender is an acting legal director at the Human Rights Law Centre. Prof Peter Greste is the executive director of the Alliance for Journalists' Freedom and an award-winning journalist

David McBride sentence a blow for whistleblowers

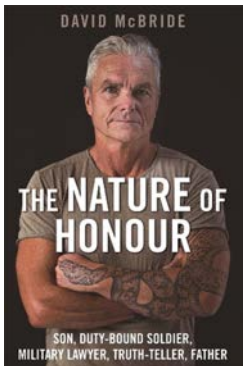
Briana Charles

The Saturday Paper, 18–24 May 2024

AS JUSTICE DAVID MOSSOP handed down his ruling on Tuesday, the word "shame" rang through the courtroom. Moments earlier he had announced that David McBride, a former military lawyer who served in Afghanistan in 2011 and 2013, faced five years and eight months in prison for leaking documents revealing Australia's involvement in war crimes. The non-parole period is two years and three months.

McBride says he is deeply troubled by what he perceived as systemic failures within the SAS command structure and inconsistency surrounding civilian casualties in Afghanistan. He argues senior officials in the Australian Defence Force had "habitually lied to their own people ... destroyed the lives of their own soldiers", for the sake of preserving their public image, or, as he puts it, "for the gods of PR".

As part of the sentencing, Mossop read an affidavit from McBride detailing his observations of frontline troops being unfairly prosecuted. McBride argued this was done to mask the responsibility of leadership in both the unlawful killings of Afghan civilians and the decisions they made about what information was or wasn't being disclosed to the public.



Initially, McBride attempted to address his concerns through internal channels at the ADF. In the Australian public service, this is the first point of call for claims of corruption. However, these efforts yielded no substantive results. At that point, he felt compelled to take a more drastic step. In 2014 and 2015, McBride collected 235 military documents, including 207 classified documents labelled "secret" and others designated as "sensitive cabinet papers".

McBride said he needed to give them to a "crack investigative reporter", which led to the passing of classified information to Andrew Clark, Chris Masters, and Dan Oakes of the ABC.

His leaks were followed by the Brereton inquiry, in which the gravity of the information he revealed seems difficult to refute. The inquiry unearthed what a parliamentary briefing described as "credible information" concerning 23 incidents in which non-combatants were unlawfully killed, allegedly "by or at the direction of Australian Special Forces".

"From robodebt to environmental destruction … whistleblowers have courageously revealed the corruption lurking in our institutions. What won't we know because prospective whistleblowers will see what has been done to David McBride and stay silent?"

In the sentencing on Tuesday, Mossop delivered a different ruling regarding both McBride's intent and his actions. On one hand, Mossop said the intent of the material McBride disclosed "was the opposite" of what those stories published. He implied McBride's intention should be understood in simple terms: McBride thought he was doing the right thing for all the wrong reasons and was an undeserving hero.

However, McBride's affidavit suggests his intention was not so simple. In fact, it was multi-pronged. He sought to uncover different types of corruption: of manager to worker, empire to sub-empire and soldier to civilian.

"Afghan civilians were being murdered and Australian military leaders were at the very least turning the other way and at worst tacitly approving this behaviour … At the same time, soldiers were being improperly prosecuted as a smokescreen to cover [leadership] inaction and failure to hold reprehensible conduct to account," his affidavit reads.

During the sentencing, Mossop argued there was "no doubt" the Afghan Files were a matter of "significant public interest" but there was already an internal investigation happening 12 months prior to McBride's decision to leak the documents to the press.

He suggested McBride's intent to expose leadership corruption, rather than solely expose war crimes, weakened his legal and moral defence, yet the Brereton inquiry validated the credibility of both war crime and corruption allegations by senior officials.

This raises questions about why McBride, or anyone, seeking independent oversight, should be punished harshly. Mossop is arguing McBride should have trusted an internal investigation by the same management he had credible evidence to suggest was corrupt.

Delivering his verdict, Mossop stated, "Self-confident people with strong opinions ... need to be deterred."

Yet McBride's strong opinions turned out to be true, and Kieran Pender from the Human Rights Law Centre emphasises this, arguing both the judicial and media focus on "intent" is misguided.

"What matters most is the public interest in the information whistleblowers reveal," says Pender.

"Australian whistleblower protection laws were intentionally amended to remove a good-faith threshold, in recognition that the focus should be on public interest.

"Whistleblowers make Australia a better place. From robodebt to environmental destruction to misogyny at the highest levels of our public institutions, whistleblowers have courageously revealed the corruption lurking in our institutions. What won't we know because prospective whistleblowers will see what has been done to David McBride and stay silent?

"His case demonstrates the shortcomings in Australian whistleblowing law, and particularly the absence of a fallback public interest defence to secrecy provisions."

The Human Rights Law Centre has been vocal in advocating against whistleblower prosecutions. "We see firsthand the chilling effect of prosecuting rather than protecting whistleblowers."

The focus on McBride's intentionality was highlighted in March in an episode of *Four Corners*. Dan Oakes, one of the journalists who broke the Afghan Files story, called McBride's intent "murky", mirroring Mossop's sentiment. McBride was painted as someone who was attempting to cover up war crimes rather than expose them, by arguing soldiers were being unfairly targeted and investigated for decisions made by leadership.

Peter Greste, a professor of journalism and communications at Macquarie University, argues the ABC did not do its due diligence about David McBride as a source, contravening best-practice media ethics around source protection.

"A journalist is only as good as their greatest source," said Greste at a conference held by the Whistleblower Justice Fund in March.

"We need to protect the chain of disclosure and the point is that the reason we have press freedom is not to

protect a particular group of individuals — whether they're whistleblowers or sources or journalists — it's to maintain democratic accountability, and that's not going to work if bits of the chain are vulnerable to prosecution and others are protected. And so that's why we think that it's as important to protect the journalist sources as it is to protect the journalists themselves."

A lawyer for McBride, Mark Davis, on Tuesday said his legal team would soon appeal the initial ruling that had prevented his client from mounting a defence. Mossop determined in November last year McBride had no legal right or obligation to "breach orders" by disclosing the documents to journalists and his actions were not justified by public interest.

"Thanks to some recent social media activities … we have the funds to lodge an appeal and we mean to do so," Davis said outside the courtroom. "We know that the Australian military teaches a much broader notion of what the duty of an officer is in a battlefield than to follow orders.

"We think it's an issue of national importance, indeed, international importance, that a Western nation has such a narrow definition of duty."

Throughout Tuesday's proceedings, Mossop repeatedly dismissed McBride's claims of public interest and even questioned the sincerity of his late guilty plea. "I do not accept that ... McBride genuinely believed that he was not committing a crime," he said.

Greens Senator David Shoebridge joined protests outside the courthouse after the ruling. Recalling his conversations with McBride after the hearing in November, he expressed his shock at the sentence.

"David is a lawyer, through and through," Shoebridge said. "When the charges came down, I truly believed the legal system, with all its checks and balances, wouldn't allow it to get this far. All he did was expose the truth."

On Thursday, a group of backbenchers issued a joint letter asking for the governor-general to use the Royal Prerogative of Mercy to grant McBride a full pardon.

Davis said his legal team would continue to fight for McBride because he had acted in keeping with "the oath that he made to his nation".

The secret country

Editorial
The Saturday Paper, 18–24 May 2024

THIS IS A COUNTRY in which you cannot tell the truth. There are no meaningful protections for the people who do. The punishments that await them are extravagant and deliberately cruel.

David McBride should not be in prison. The attorney-general should have intervened to end his prosecution, just as he did in the case against Bernard Collaery. No one should be incarcerated for exposing crimes.

McBride faces almost six years in jail. His non-parole period will make him at least 62 before he is free. He is already unwell. He hopes he will be allowed to take his dog with him for support. Justice David Mossop says he is a man "obsessed with the correctness of his own opinions".

Without McBride, we likely would not know of the war crimes committed by Australian troops in Afghanistan. Even with his cache of leaked documents, action on these crimes has been horrifyingly slow.

A civil court has found the crimes were probably committed. The Brereton inquiry also found credible evidence of murder. Despite this, the desire to prosecute anyone but the whistleblower has been meagre.

Widows wait in Afghanistan to be interviewed. Every year they get further from justice. Their husbands were killed for sport and as trophies. Their children are destitute. They have received no compensation despite what Australian soldiers did to them.

It is a backwards world where McBride is the villain in this. The first man to go to prison for these crimes is the one who said they were happening. He is guilty of stealing documents and sharing them with journalists. These actions led to a police raid on the national broadcaster. The revelations set off a pall of intimidation. McBride's jailing is the culmination of this, the final note that says: do not speak up.

Australia is a land of secrets. Defamation law and national security legislation make our press one of the least free in the world. Basic aspects of journalism are criminalised. The government licenses enormous intrusions into the truth.

This suits politicians. It is useful to the powerful. Australia views itself as a comfortable and mature society and this obscures how frequently our rights are curtailed and infringed. We are a country where a military lawyer can be sent to prison simply for noting that soldiers are unlawfully killing civilians and that the leadership above them should be doing something about it.

McBride's disclosures challenged two institutions central to Australia's character: the military and silence. He is being punished for embarrassing both. He broke a code that is written into this country's laws: we do not talk about the wrong we have done. We would sooner lock up a man for telling the truth than look too deeply at what that means.

With Boyle next up, it's time for Labor to walk its talk on whistleblowers

Paul Gregoire
Sydney Criminal Lawyers
24 May 2024

NOT ONLY were locals taken aback when lawyer David McBride was given such a severe prison sentence last week, close to six years inside for leaking information that exposed war crimes, but the global press appeared shocked that Australia was locking up the famed whistleblower at all.

The gaoling of McBride finally brings an end to the spectre that federal Labor, and indeed, attorney general Mark Dreyfus, had been conjuring over the last years of the decade that party had found itself in opposition, which was the ruse about doing good by whistleblowers when in office.

To feign a whistleblower-saviour complex as Dreyfus did in his last years in opposition was to side with their supporters, like the Alliance Against Political Prosecutions, and more partic-

ularly, to show a willingness to assist with three key whistleblower prosecutions, with McBride's being one.

But the imprisonment of McBride, which prior to any appeal sees him unable to seek parole for two years and three months, is only the latest instalment of a sideshow that's seen the AG release a non-whistleblower and then continue to fry the two public servants who spoke out about corruption.

And this spectacle isn't over. Once the disbelief over McBride's fate wears off, the realisation is ATO whistleblower Richard Boyle remains the last discloser on the hit list, and just as David hardly deserved years inside, no one wants the man who stopped illegal tax practices being sent away.

Synchronised legislating

Boyle blew the whistle on the Australian Taxation Office, when he took the story to the press in mid-2018. But he only did this after first going to his seniors with the issue, which was an illegally applied debt collecting practice that's since been ceased, and he then went to an independent watchdog.

In fact, Boyle knew the correct steps to take in blowing the whistle, as he was following the rules set out in the Public Interest Disclosure Act 2013 (Cth) (PID Act), which is the federal legislation designed to protect those disclosing corrupt practices in the public service.

In October 2021, amid the furore over the prosecutions against McBride, Boyle and Witness K and his lawyer Bernard Collaery, Dreyfus told the press that the protection framework in the PID Act was "not a perfect scheme" and he committed to making "necessary improvements" when in office.

Dreyfus drafted the laws in 2013, during an earlier stint as AG, and he said it had been a "great disappointment" to have watched from opposition as the Coalition refused to fix his bad law, following the 2016 Moss Review report having indicated 33 ways in which it could be improved.

But when our chief lawmaker came to office, he didn't get around to introducing the first stage of PID Act reforms, which were urgently needed for the federal corruption commission, until the month after McBride and Boyle were made to put their defence under the old law in October 2022.

So, Boyle's defence was rejected under the pre-reform law in March 2023, which all boiled down to Dreyfus' law not covering disclosers in terms of how they gather evidence to prove wrongdoing. And the ex-ATO officer then appealed this last August and is now awaiting the determination.

If Boyle is unsuccessful, he faces 24 criminal charges. At first, they actually slapped him with 66 counts. And as for Dreyfus' PID amendments, the first round commenced last July, while a consultation paper on the second was released last November, and now we're waiting on the bill.

At the attorney's whim

The prosecutions against Boyle, McBride, Witness K and Collaery were all launched in 2018 under the watchful eye of Coalition attorney general Christian Porter, at a time when it appeared the government was out to get public service whistleblowers.

By the time Dreyfus took office, K had already pleaded guilty and received a suspended sentence. So, the new AG released Collaery, which pleased many, and they're still pleased in that regard, but they'd be happier if McBride wasn't in gaol and Boyle's fate wasn't hanging in the balance.

The thing is, the nation's chief lawmaker holds a power under section 71 of the Judiciary Act 1903 (Cth), which permits them to bring a prosecution to an end. So, Dreyfus could have intervened in McBride's case at any time, and he could drop the prosecution against Boyle right now.

But when the Alliance Against Political Prosecutions pressed Dreyfus on why, following his having let Collaery off the hook, he didn't extend this pardoning power to Boyle and McBride, the AG replied that he can only do so under "very unusual and exceptional circumstances".

And with absolutions for some and half-decade-long sentences for others being based on such ambiguous explanations, it's no wonder the attorney had been hoping the Coalition tweaked his PID laws before he had to do it on re-election.

Popular support

The crackdown on whistleblowers — which, with McBride's sentencing, now appears to be a bipartisan project, while public support for the disclosers is ever-growing — highlights that the Greens and progressive independents are increasingly representing grassroots opinion.

Indeed, the vast majority of the crossbenchers last week presented a letter calling on the PM and the AG to immediately pardon David McBride.

Thirty parliamentarians presented a letter dated 16 May, deeming the sentencing of McBride a "dark day in Australian history" and asserting that whistleblowers make the country "a better place", and they then called for both the McBride and Boyle matters to be brought to end.

The MPs and senators request that the senior ministers provide a full pardon to McBride, discontinue the prosecution against Boyle, that they conduct a full overhaul of whistleblower and secrecy laws and that they commit to establishing a whistleblower protection commission.

"By ending the war against whistleblowers, establishing a whistleblower protection commission and pursuing ambitious, comprehensive law reform, this government can ensure whistleblowers in Australia are protected," the parliamentarians stressed, "not punished, prosecuted or imprisoned."

But as it currently stands, federal Labor, despite its protestations otherwise, has determined the correct way to deal with public service officers who expose government wrongdoing is to punish them, and that the constituency can read its duplicity of tactic here is of no real concern.

Miscarriage of justice for hundreds of subpostmasters

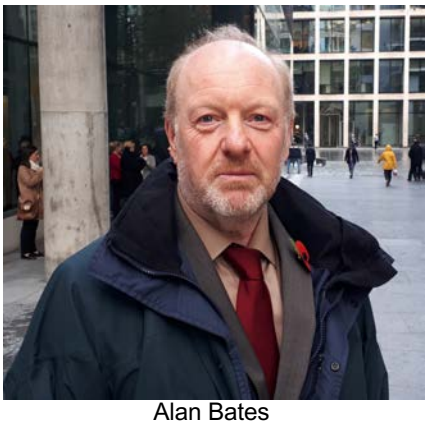
Carol O'Connor

WHAT HAS BEEN TERMED the most serious miscarriage of justice in UK legal history and often called the Post Office scandal began nearly 25 years ago. It became visible more widely and publicly when a TV drama called 'Mr Bates versus the Post Office' was aired in 2024. The plight of the subpostmasters caught up in the scandal, and their long fight for justice, was the focus of the dramatization. A statutory public inquiry began in June 2021, is still running and is available to watch on YouTube. It is very rare to be able to see the layers of an organisation that has functioned so badly and affected so many lives, through the documentation made at the time, with those who had responsibility for the events that unfolded questioned and held to account for the decisions they made.

Going back 25 years, in 1999/2000, the Post Office (the Government the only shareholder) made a changeover from a paper-based system to a computerised system called Horizon, and at the time it was the biggest non-military IT project in Europe. Almost immediately, subpostmasters reported that they were experiencing shortfalls they could not account for. The computer company Fijitsu had been aware of software bugs soon after it was installed, and as early as 2003, an independent expert IT witness gave evidence in a Court case involving a subpostmaster that in their opinion, the shortfall was caused by the computer system. This information was ignored and subpostmasters contacting the help line, concerned about discrepancies in their accounts, were told they were only one experiencing problems and that they had to make up the shortfall, amounts into the thousands of pounds. There were 900 prosecutions for fraud, theft, and false accounting between 2000 and 2014, 700 by the Post Office itself which has the power to prosecute, and 236 were jailed. Many subpostmasters were made bankrupt, lost their businesses and sometimes homes, were shunned by their communities, and four subpostmasters have taken their own lives. The children of the subpostmasters have begun to talk publicly about how their childhoods were affected by their parent's plight.

When over time, as the Post Office continued to blame and prosecute the subpostmasters, what the inquiry have described as 'rumblings' about the Horizon system became louder and louder as questions were asked by MPs, journalists, and the subpostmasters affected by Horizon. The Post Office responded by opening an independent investigation of a number of cases by a forensic accounting firm called Second Sight. This firm identified that there were problems with the computer system that had caused shortfalls, and with the likelihood that serious miscarriages of justice had occurred. They also criticised the Post Office for its 'asset recovery' approach rather than investigating the cause of the problems. The Post Office response to this report was to close down the involvement of Second Sight (too expensive) and the proposed mediation processed was halted. There has been evidence at the inquiry that Second Sight had got close to the truth and the Post Office wanted to take back control of their unwavering narrative that the Horizon system was sound.

Following the breakdown of the mediation process, a number of the subpostmasters met at village with the picturesque name of Fenny Compton and formed the Justice for Subpostmasters Alliance. Central to this campaign was Alan Bates, a Welsh postmaster who refused to pay back shortfalls because the cause could not be identified on the Horizon system. Alan Bates and his partner lost their livelihood and life savings when the Post Office closed their business. In 2017, 555 subpostmasters took a group action against the Post Office in the High Court, funded through a litigation firm. The first part of the action was on the contract between the Post Office and postmasters and the second on the Horizon system. In 2019, the Judge ruled that the contracts were unfair, and in the second action, that the system contained bugs, errors, and defects. Judge Fraser commented that the denials that there were problems with the Horizon system 'amounts to the 21st century equivalent of maintaining that the world is flat'. The Post Office tried to have the Judge recused, and then appealed which was not upheld. The case was settled when the PO agreed to pay £58 million without admitting liability, however the subpostmasters were left with only £12 million, £20,000 for each subpostmaster after costs were deducted. However, winning this case opened the way for convictions to be quashed, and 100 were found to be wrongfully convicted and awarded compensation, and more than 2,750 submasters who were not convicted were also entitled to compensation, but many are yet to receive this.



Alan Bates

As the inquiry continues, there are still many questions that have not been answered, such as where did the substantial amounts of money go that was effectively stolen from the subpostmasters? To make up false financial black holes? The current CEO of the Post Office stated to MPs that the company 'has still not got to the bottom of this'.

This 20-year David and Goliath struggle has a lot to teach whistleblowers, and I have learnt a great deal from listening to the evidence of Alan Bates in particular. He kept meticulous written records that stand up to legal scrutiny and logged every call to the helpline, over 500. It was clear that his efforts to resolve problems with the Post office were constructive and polite. The tone of the correspondence only changed after he realised what he was up against when his contract was

terminated, and he became aware of the plight of other subpostmasters. He then references in his letters the 'thugs in suits' sent out by the Post office to investigate the subpostmasters.

Many issues that have emerged from this scandal are similar to those faced by whistleblowers. In particular, whistleblowers dealing with retaliation and disciplinary action face the same lack of independence as careers and reputations are ruined. The Federation of Subpostmasters did not offer support as livelihoods and lives were destroyed and was found in the Court hearing not to have independence from the Post Office; this alignment of professional organisations with the organisation was raised in interviews in my study on the impact of whistleblowing

A legal framework has been required to get to the truth of what has happened, however the legal fees involved are immense. The Post Office spent £100 million and the subpostmasters £47 million on the High Court action, and then there are the legal costs involved in a four-year inquiry. It is hard not to think that the postmasters should have been paid compensation from this huge expenditure many times over to help get their lives back together, but many postmasters including Alan Bates are still to get the compensation they are owed; a number of subpostmasters have died in the meantime. And of course, the Post Office have been running the compensation scheme.

Will there be prosecutions to follow such a huge miscarriage of justice for so many? It is often raised when there is organisational wrongdoing, but never seems to happen.

Whistleblower rewards and the Office of the Whistleblower

Michael Cole

RECENTLY there has been some discussion about two whistleblowing issues. Firstly, the potential for an overarching independent Office of the Whistleblower or Whistleblower Protection Authority. And secondly, the merit of introducing a whistleblower reward scheme similar to those in the US, Canada and South Korea. On examination, these two issues could usefully be dealt with together.

Rewards for whistleblowing

I am opposed, on moral grounds, to the opportunistic lottery that makes occasional citizens very large sums (USD 279 million recently) as a reward for whistleblowing to the government, such as the United States' False Claims Act, Dodd-Frank Act, IRS Whistleblower Reward Act and eight other US Acts. The whistleblowers and their lawyers make 10% to 30% of the money recouped or fines issued by the government.

It is immoral for a government to make huge sums and to reward whistleblowers who provide information to the government's advantage, while at the same time prosecuting whistleblowers who provide information about the government's corrupt or illegal actions. Additionally, the government passes protective 'secrecy' legislation that ensures that the government's whistleblower prosecutions (reprisals) will inevitably succeed.

The reward schemes lack distributive justice. A few lucky so-called whistleblowers make a fortune with no risk to themselves because they do not whistleblow about the government, while whistleblowers about the government or public services are ignored, silenced, prosecuted, or psychologically damaged and very often end up losing everything. There is nothing to recommend these reward schemes to the latter type of public interest (PID) whistleblower. The whistleblowers who we know and love at Whistleblowers Australia (WBA) will never be the ones rewarded.

In fact, PID whistleblowers do not want rewards. Public interest whistleblowers want some form of corruption put right by someone they believe has the power to do so. That is their motivation. They want the corruption, fraud or an improper state of affairs put right. They also do not want to lose their careers, homes, and family or be psychologically harmed or put in jail, which often happens when the *government's and the public service's* corruption is exposed. The public benefits from, and has an interest in, correcting corruption, encouraging PID whistleblowing and in protecting or compensating whistleblowers for the harm done to them.

The reward scheme is also discriminatory. I feel certain that neither the US nor the Australian governments scrutinise the behaviour of the whistleblowers under the US Acts, or disclosures to the IRS or ATO, to see if they obtained the information illegally. I doubt they prosecute those who give information, to the IRS, ATO or police, for stealing the data digitally or by theft of documents or trade secrets or photographing or photocopying personal or confidential documents or financial information of the tax cheat or criminal. But whistleblowers about government malfeasance will be subjected to this scrutiny and prosecuted.

Financial rewards to individuals can be criticised on other grounds. They place value on money and not altruism or civic duty. And they do not correct corruption in important non-financial areas like health, research, safety and the environment.

There would be no objection to the rewards for whistleblowing being pooled and used in the interests of the public and all whistleblowers in preventing and correcting corruption. That would certainly be in the public interest. Up to 30% of the money recouped or gained in fines by whistleblowing in Australia (including from tip-offs (whistleblowing) to the ATO and other financial or investigative agencies) could be legislated as rewards and compulsorily put into an independent trust managed by a statutory Whistleblower Protection Authority or Office of the Whistleblower to fund its activities and functions. The Office must have authority to compensate those whistleblowers harmed by reprisals in what Tom Mueller describes as "a net present

value lump sum payment for a lost career," home and family.

There should be guidelines for the independent trust managers to regularly spill funds that exceed the budget requirements of the independent Office of the Whistleblower into general revenue. Thus, even the reward money would end up in the government's coffers, less the cost of running the independent Office of the Whistleblower. And the government would be less able to cease funding (starve) the independent Office.

No agency or office can be independent of government if it is funded or partly funded, directly or indirectly, by government. The conflict of interest is substantial.

There may be other ways to fund an independent whistleblower investigative and protective body, but it is difficult to ensure that the funding remains independent of government. Currently, investigative bodies complain that their funding has been progressively cut to the point where they are unable to investigate anything and are limited to mainly performing regulatory paperwork. Pooled reward funding would make the funding independent of government because the rewards would be justiciable (triable in court).

Regulatory capture must be prevented. Regulatory capture occurs when the regulatory body is unduly influenced by those imbued with the culture or interests of the regulated entities. Often regulatory bodies are headed by people who have just recently headed an organisation regulated by that regulatory body and often this occurs on an informal roster system. There is then a conflict of interest for the head between enforcing the rules as a regulator or compromising in the interests of the regulated entity.

The head and senior managers of the Office of the Whistleblower should not be drawn from the public service or government. They should preferably be drawn from professionals with regulatory backgrounds.

A no wrong door policy for PID referrals should be adopted. Every supervisor should have a duty to direct the discloser or the PID to the correct agency or officer. But every PID dealt with by an agency, whether investigated or not, should be registered with the Office of the Whistleblower and a final simple satisfaction rating obtained from the whistleblower (if contactable) and the summary data published yearly.

Statutory offences should be included in the whistleblower protection laws and the authority conferred on the Office of the Whistleblower to provide some capacity to deter adverse behaviour. Obstructing the proper investigation or remediation of any part of the corruption disclosed by a PID that is eventually vindicated should be an offence, and so should reprisals or administrative sanctions or prosecutions not proportionate or commensurate with the actions taken against other employees in similar, non PID, circumstances.

Limitations on making an external disclosure should be greatly reduced. An external disclosure should not be limited in scope to the barest minimum. An external disclosure should include a complete disclosure of the same and substantially similar material to the initial disclosure and should not be limited to "No more information … than is reasonably necessary to identify one or more instances of disclosable conduct." This is a restriction which favours keeping the corruption, or most of it, covered up. A whistleblower is a community stakeholder in remedying detected corruption. So, there should not be a limit on the external disclosure of the PID if the accused agency has constructively refused to correct the corruption.

Making a disclosure is not a point in time event. Making a disclosure is like making a cake. It requires preparation and collection of ingredients, sometimes days before, then mixing and leaving out ingredients which are in excess of the recipe, baking and finally achieving the goal of the activity without which the whole exercise would be pointless. The substance of the disclosure and material disclosed should be considered rather than the strict form it takes. They do not want to be limited to making a bald disclosure that has no credibility. They require sufficient evidence of corruption to be credible. Making a disclosure should include the pre-emptive and preparatory gathering of information sufficient to make the disclosure credible and trigger an investigation, whether or not any part of that information is disclosed, registering (rather than "making") the disclosure with a supervisor or authorised recipient, being a community stakeholder and source of further information for the investigation and finally being apprised of the outcome and rating a satisfaction score regarding that outcome.

Conclusion

There are moral and common justice reasons for rejecting a financial whistleblower reward system based on the sum recovered and the requirement (there being no alternative) that the whistleblowing cannot be about the government or public service. And for rejecting a scheme that does not promote altruism and civic duty.

Public interest whistleblowers are not financially motivated. They simply want some form of corruption put right on behalf of the public. And they do not want to be harmed by reprisals and lose their career, home and family. To protect and support PID whistleblowers for the public benefit an independent overarching Office of the Whistleblower or Whistleblower Protection Authority is the next essential step.

There should be no objection to pooling the rewards for whistleblowing to fund the independent Office of the Whistleblower for the benefit of everyone, with any excess being regularly spilled back to the government. Compensating PID Whistleblowers for the costs and loses involved must be within the authority of the Office of the Whistleblower or Whistleblower Protection Authority.

Where there has been no adequate attempt to correct corruption, or even a constructive denial of corruption, a low risk, substance rather than form, non-black-letter-law, pathway to making an external disclosure must be available. Finally, there should be offences in the PID acts discouraging behaviour which thwarts the correction of corruption.

Michael Cole is vice president of Whistleblowers Australia.

BOOK REVIEW

Whistleblowers and rebel ideas

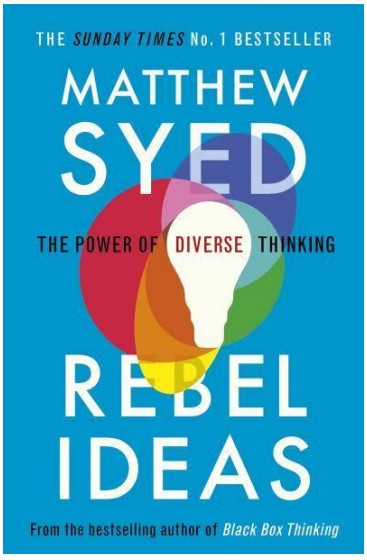
Brian Martin

MATTHEW SYED has written several bestselling nonfiction books, both entertaining and informative. Before he became a writer and commentator, he was a top table tennis player, winning the Commonwealth championship three times. His first book, *Bounce,* published in 2010, drew on his experience. It is an accessible account of research on expert performance, covering what it takes to become a top performer in any field. The key is not natural talent but hard work and valuable opportunities.

After *Bounce,* Syed has continued to write about how to do better. One of his subsequent books is titled *Rebel Ideas,* which sounds, on the surface, especially relevant to whistleblowing. *Rebel Ideas* is about the power of diversity and the perils of not having enough of it.

> The success of organisations, as well as societies, depends on harnessing our differences in pursuit of our vital interests. When we do this well — with enlightened leadership, design, policy and scientific insights — the pay-offs can be vast. (p. 245)

Sounds good. And who better to offer rebel ideas than whistleblowers, who are quite different from their co-workers in being willing to speak out in an attempt to help organisations and societies achieve their potential?



Alas, Syed never mentions whistleblowers. Still, there is much of value in his book, and in some ways more to learn from what he doesn't address than from what he does. There's a clue in the above quote, where he refers to "our" and "we." More on this later.

Like other talented nonfiction writers, Syed addresses important points by using stories. His first story is about the 9/11 terrorist attacks and the CIA. It was the CIA's biggest failure. There were plenty of clues about the threat, and one of the problems was that those who raised the alarm about a looming attack were ignored or shut down. That's a whistleblower sort of story, not addressed by Syed. His theme is diversity, and that's what the CIA didn't have. Its recruitment procedures aimed at hiring the best and brightest, but they were all middle-class white males. There were hardly any women or members of minority groups, and what Syed calls "collective blindness" was the result. The lesson: the best and brightest individuals, collectively, are less clued in than a workforce with diversity.

Here was my first quibble. The CIA sought to counter threats through surveillance of threatening groups, anticipating their plans and foiling them. That's fine at one level, but there's another way to look at this. Al-Qaeda and other terrorists don't strike randomly. They are driven by perceived grievances, and many of their grievances result from US government actions, such as military interventions. One way to prevent terrorism is to address grievances, including by changing US policies from force and exploitation to being more supportive and cooperative. This was off the agenda before 9/11 and remains off the agenda. From the perspective of the spy agencies, this would be a rebel idea. However, Syed doesn't mention this, instead accepting the CIA's conception of its mission and methods without question, except to figure out how to do it better.

The power of diversity is shown in another phenomenon called the wisdom of crowds. Ask the world's greatest expert on the share market what's likely to happen in the next year, and compare this to the average of a group of good share market analysts. Which is better? Most likely the group. But sometimes groups go seriously wrong. Syed gives examples from British government policymaking. The idea of the poll tax turned out to be disastrous, triggering massive opposition. So how did a group of elite policymakers get it so wrong? The problem was homophily: the members of the cabinet were very similar in education and background, and they had no idea of what life was like for those less privileged. For a group to be good, there needs to be diversity in experience and worldviews. As an example of when group diversity by design led to brilliance, Syed tells of the British team assembled during World War II tasked with breaking the Nazis' secret codes. Some of those recruited were top mathematicians. Others were experts at solving crossword puzzles!

Diversity in groups sounds good, so why is it so difficult to achieve? One answer is that those in charge care more about feeling good when they are with like-minded others. Is there more to it? Why don't managers set up groups that include whistleblowers? That, surely, would help avoid disastrous decisions damaging to the organisation and the public.

Syed tells the story of a tragedy on Mount Everest. In May 1996, three teams were making the ascent, each led by one of the world's leading mountaineers. Each team was composed of experienced climbers who had other occupations, so the teams were diverse in knowledge. One climber worked as an airline pilot, and he recognised a cloud formation as threatening a major storm. With decades of flying at high altitudes, he was used to interpreting the danger signs. But he didn't say anything to warn others. Why not? Because he didn't want to challenge the team leader, Rob Hall, who had impressed on the other climbers the need to always follow his instructions. It sounds plausible that everyone should obey the most knowledgeable person, the leader — Hall had ascended Everest four times previously — but Syed says that teams are more effective when communication channels are open, and junior members can contribute to decisions. This also applies to teams of surgeons and aircraft crew. Syed's point is that communication among teams is more important than having the top talent as supreme leader.

However, the reality in many organisations is quite different. Not only is the leader less than perfect, if not incompetent, but contrary information is not welcome. Furthermore, the members of the organisation, the "team" if you like, are not united in their goal, because some of them are involved in dodgy activities. Those employees with different perspectives and a willingness to express them are seldom invited into the inner circle. Rebel ideas are not welcome. The odd thing is that most whistleblowers are not rebels, but just want to make the organisation live up to its own stated principles. In a sense, their ideas are not rebellious but conservative. All the stranger that they are so unwelcome to higher-ups.

Syed tells the story of Derek Black, brought up in the US by white supremacists and already in his teens one of the most articulate exponents of this racist perspective. His parents home-schooled him and were not worried that his views would change when attending university. To understand what happened to Black, Syed explains the difference between information bubbles and echo chambers. If you're in an information bubble, you only hear one perspective and have no idea there are different ones. But that's rare today outside of cults. If you're in an echo chamber, you mainly hear one perspective but also hear contrary views — and are resistant to them. In an echo chamber, your adherence to your ideas is reinforced by the group, so hearing different views makes you more committed to the ones you have. Condemning white supremacists may only cement their views.

Derek Black could have gone to a large university, with tens of thousands of students, but his parents instead sent him to a small college with only hundreds of them. Now the counter-intuitive thing is that echo chambers are more likely on a large campus, because students can find exclusive groups in which they fit in. At New College in Florida, numbers were so small that Black, to have any social life, got to know students with different backgrounds and views. He was no longer in an echo chamber, and his views shifted.

These ideas can be applied to whistleblowing. When the leaders of an organisation are in an echo chamber, not only do they mainly hear one point of view, but they are actively hostile to contrary ones. What is a worker with an innovative idea to do? Maybe try somewhere else. A whistleblower comes with a doubly challenging idea. It might threaten managers because they are implicated in wrongdoing or condoning it, but the reports of problems also clash with the managers' self-image of running a well-functioning operation. Well, I'm not sure how the idea of echo chambers applies to whistleblowing. Maybe Syed will write a book about whistleblowers as bearers of rebel ideas.

Most of Syed's stories are about individuals involved in groups in which the goal is clear. The CIA wants to stop terrorism, climbers want to ascend Everest and company managers want to make money. They are all part of a "we" with a common aim. But maybe this is misleading because not everyone is on board with "our" goal. They have other priorities.

The subtitle of Syed's book is *The Power of Thinking Differently.* If only whistleblowers had enough power to get others to take their different ideas seriously.

BOOK REVIEW

Blowing the whistle on pet food fraud

Michael Cole

Multi-Billion-Dollar Pet Food Fraud is Dr Tom Lonsdale's third book exposing the culture, promotion, and conflicted marketing strategies of commercial pet food companies. To make sense of the problem described by Dr Lonsdale, it is probably best to look at five issues: how and what dogs and cats eat, how well a commercial pet food matches these needs, the duties of corporations and businesses, and the ethics and regulation of the veterinary and pet food industries. And finally, whether a raw meaty bone diet (RMBD) is preferable to commercial pet food. To avoid confusion, Dr Lonsdale's promotion of the RMBD does not include supporting the 'biologically appropriate raw food' (BARF) diet which is not similar to the RMBD.

Firstly, in nature cats eat only raw prey (meat, organs, cartilage and bone) and dogs (originally wolves) must eat raw prey but can and do supplement with vegetable matter. In both cases the teeth evolved to be narrow and sharp for tearing, ripping and cutting raw meat, cartilage and sinews from the bone. These deep tearing actions also clean the teeth and, importantly, the gums, preventing the build-up of plaque which causes infection and gingivitis (gum inflammation). Without this cleaning action of tearing raw meat, chronic periodontal disease (inflammation around the teeth) sets in. It is claimed that gingivitis and periodontal disease cause harm to the rest of the body (as they do in humans). Periodontal disease around the teeth is painful and may remain for years, and produces toxins and immune responses that harm many distant essential organs like the heart, liver and kidneys.

Secondly, Dr Lonsdale points out that commercial pet food, which is soft or small kibble, does not require deep biting and tearing and does not produce the required tooth and gum cleaning action that raw meat on the bone provides. In the resulting gingivitis and periodontal disease, the infecting bacteria and other germs feed on the introduced sugars, grains and vegetables in commercial pet food, making gum and other diseases worse. On pet food, over 70% of dogs and cats have periodontal disease by three years of age. Veterinarians charge for cleaning a pet's teeth and the anaesthetic required is not without risk especially in older pets.

Thirdly, a corporation can do anything if it is not illegal and it makes money for shareholders. The only duty is to shareholders to make them money. They do not have a duty to anyone or anything else. And they must obey the law.

Fourthly, regulatory bodies can be set up by government to ensure companies comply with the legal requirements. But, as Dr Lonsdale points out, the pet food industry in Australia is not

regulated and regulatory agencies or stakeholders are often "captured" by companies. Large companies have large budgets for lobbying politicians and capturing regulators and stakeholders. Regulatory capture occurs when the regulator is dominated by industry interests. Often regulators come from a pool of managers and experts who work in the regulated industries, and who often return to the industry.

Respected stakeholders and advocates in animal welfare, like veterinarians and the RSPCA, have a capacity to act as informal regulators. But, in the opinion of Dr Lonsdale, they have been captured by the pet food industry. Veterinarians derive income from selling pet food and medications directly to customers. Pet foods and medications are displayed for purchase in veterinary surgeries. The RSPCA too is sponsored by the pet food and pet medication industries. And they have adverts and links to pet food and medication companies on their webpages. Veterinary university departments and their students are influenced by confidential funding, grants, advertising and lectures by the pet food industry. By contrast, medical doctors are forbidden from selling the medications or treatments they prescribe because of the financial conflict of interest. They are forbidden from receiving gifts above a certain value from drug, implant or medical equipment companies. Corporate access to medical students is increasingly curtailed.

Pet owners should be aware of the conflict of interest that veterinarians and the RSPCA, in general, have when giving pet feeding advice.

Finally, about ten percent of veterinarians, like Dr Lonsdale, argue that cats and dogs should be fed regularly on appropriate raw meaty bone diets (RMBD) and that tearing the meat off the bones would clean the pet's teeth and gum thus preventing gingivitis and periodontal disease and their detrimental effects on other organs. The pet food companies, the Australian Veterinary Association (AVA) and the RSPCA do not agree.

The A$5.8-billion-dollar-a-year pet food industry and the AVA argue against the raw meaty bone type diet. Their main arguments are that there are no satisfactory studies demonstrating the benefits of the diet, that a raw diet poses a Salmonella and other infection risk to pets and humans, that a raw diet is not nutritionally sound and that bones may break teeth. These claims are not supported by available research.

Studies as far back as 1966 demonstrate that feeding just one raw oxtail a week markedly decreases tartar, Salmonella accounted for 56% of 206 pet food recalls in the US over 12 years, nutritional deficiencies accounted for 13% of recalls, there were 33 recalls due to Melamine poisoning resulting in 8,500 pet deaths, Salmonella is often present in retail raw human food, especially chicken and ground meats, no study has demonstrated human infection from pet food except in multi-animal facilities and in nature a quarter of all carnivores have broken at least one tooth.

There is an Australian Standard for pet food, AS5812, but it is voluntary and companies in Australia are not required to comply with it. It appears to be an excellent standard requiring and defining nutritional standards, labelling and recall of contaminated or toxic pet food, but consideration of a raw meaty bone diet and whether it reduces suffering and promotes health is outside its scope. Experts employed by the pet food industry and veterinarians contributed to AS5812 which needs to be kept in mind as a conflict of interest.

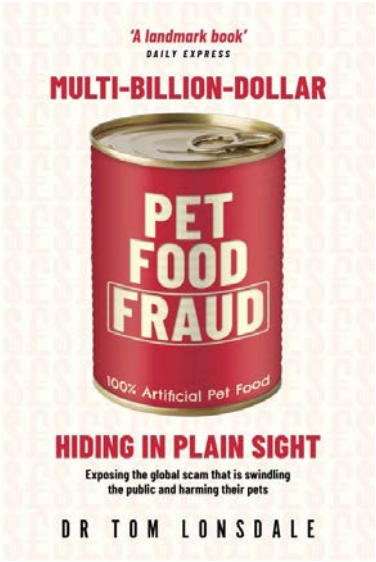
The AS5812 inclusion of ingredient labelling is a mixed blessing because it is almost irrelevant. Food labelled as beef, for example, can contain up to 75% meat which is not beef. Foreign imported supplies do not need to be declared. And there are at least six chemical groups added to pet food which are not "food," for example preservatives and humectants.

Unsurprisingly, Dr Lonsdale was expelled from the Australian Veterinary Association for "bringing the AVA into disrepute." That was a standard "breach of the code of conduct" reprisal which is no longer lawful under the current whistleblower protection provisions.

The Multi-Billion-Dollar Pet Food Fraud is certainly a thought-provoking read. Periodontal disease in pets is both chronic and painful and may increase the risk of other conditions as it does in humans. Studies have shown that even weekly feeding of meat on the bone markedly reduces the calculus that predisposes to periodontal disease and pet halitosis. The pet food corporations appear to have done their best to ensure the nutritional balance and adequacy of their foods, and perhaps some of the pet food recalls were due to faults in their suppliers. On the other hand, they are unregulated in Australia and appear to have captured the potential informal regulators including the veterinarians.

The 2018 Senate inquiry into the pet food industry did not examine the RMBD (or any diet) but did say "If … there is a better [non-commercial] diet, then the industry requires regulation." That leaves the ball in the RMBD advocate's court. Research showing that a diet without any raw meat on the bone is inadequate for pet health would prove the point.

Readers should make up their own minds, but the issue need not be so polarised. A raw meaty bone diet and a commercial diet could potentially supplement each other. It may not be *either or*. What is needed is research into the benefits and harms of a RMBD. Initially starting perhaps with a simple pilot study documenting the health history of pets and their teeth, and their dietary history. Plus, a non-invasive examination by a different individual ('blinded' to reduce bias). Everything could be done at a single visit. Thus, the health effects of whatever diets the pets had been given over time could be correlated with their diet history. No actual intervention would be needed.

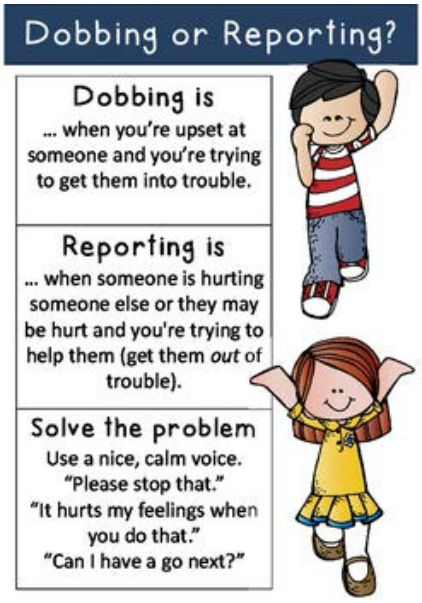


Tom Lonsdale, *Multi-Billion-Dollar Pet Food Fraud* (Sydney: Rivetco, 2023). Tom's website: https://www.thepetfoodcon.com

Aussies don't dob: cultural influences on whistleblower programs

Calvin London,
Corporate Compliance Insights
29 May 2024

AUSTRALIANS have many culturally unique traits, including an aversion to what they call "dobbing," or snitching on their coworkers or mates. Calvin London, himself an Aussie, wonders if this distinctive characteristic raises an intriguing question: What impact does cultural influence have on the success of internal speak-up programs or external whistleblower systems?



Australians have long been recognized as a people who do not dob or secretly tell someone in authority that someone else has done something wrong to fellow workers. The ethics of standing by one's mates means that many Australians have a dim view of dobbing, which can have a significant effect on the success of internal speak-up programs or external whistleblower systems and provides an example of the consideration that should be given to the cultural aspects of such programs.

Global whistleblower programs

The US, with its advanced and successful whistleblower program, and the UK, which has set the standard and provided guidance for many other European countries, are the frontrunners in this field.

In the US, a whistleblower may receive a reward of 10%-30% of what the government recovers when the SEC recovers more than $1 million, and the commission may increase whistleblower compensation based on many factors, such as how important the information was to the enforcement action.

In May 2023, the commission announced it had awarded a staggering $279 million to a single whistleblower. This is the largest financial reward ever disbursed under any whistleblower program, sparking a fresh wave of discussions about the merits of rewarding whistleblowers. Proponents of the argument claim that whistleblowers suffer personally and professionally and, therefore, need some compensation to cover costs. Opponents argue that whistleblowers should speak out should do so out of an unblemished sense of righteousness and civic duty, not because they might profit from it.

Financial incentives aside, there is also the problem of retaliation against whistleblowers, which can be a strong deterrent against making a claim. Would a fixed amount of money, $1 million for example, and a promise of protection against retaliation be sufficient to encourage a high-flying, upward-moving employee to dob on their workmates or the company they work for?

If this were applied to a high-flying executive who could potentially earn 10 or 20 times this figure, would it change their thinking?

Differences in whistleblower systems

In the US, while regulators would like to see even more reporting and recognize that whistleblowers play a critical role in ensuring companies operate within the law, the success of US programs is evident. The US legal system contains a multitude of state and federal laws that protect whistleblowers who report potential misconduct from any retaliation for making the report. In the US fiscal year 2023, 18,000 tips were reported and led to enforcement actions resulting in penalties of nearly $6.5 billion and awards of over $1.5 billion to 214 whistleblowers.

The US has an established history compared to other countries. The first protection law in the US was enacted July 30, 1778, two years after the signing of the Declaration of Independence. In 2002, Congress passed the Sarbanes-Oxley Act (SOX) as a reaction to several corporate accounting scandals, such as Enron, Worldcom and HealthSouth. Events like this and the long history of protections have established a cultural benchmark for whistleblowing in the US.

Levels of protection and whistleblower rewards are less developed in other countries, and the effectiveness of whistleblower programs across Europe is much lower. For example, whistleblowing systems in German, Swiss, UK and French companies were much less effective.

Many systems outside the US either lack any form of monetary compensation or, perhaps more importantly, any form of protection for whistleblowers. In the UK, for example, it has been reported that 53% of potential whistleblowers did not report for fear that it would damage their reputation and future career.

Cultural insights

Although there are some indications that the effectiveness of less-established programs or systems in other countries has improved, some, like China, Japan and Australia, are severely hampered by cultural issues and a lack of structure.

In China, for example, managers are less likely to report unethical behavior by their colleagues. The rule of law has not yet received strong institutional support there, and the traditional Chinese concept of *mianzi* (often translated as "face" or "reputation") strongly

discourages behaviors that would embarrass another person.

And the "collectivist culture" in Japan exalts the importance of loyalty and tolerates unfair-but-loyal behavior over the individualistic culture of the US. Even if whistleblowers do report in Japan, company culture tends to override the resulting action, and the initial reports are ignored for some time, as was the case in landmark cases like Toyo Tires, Mitsubishi Materials and Olympus.

Aussies don't dob

In Australia, cultural implications associated with whistleblowing are not so structured or philosophically based as the examples of China and Japan. It is simple: Aussies don't dob, and those who have dared to report have received little protection. Whistleblower protections have proven inaccessible and practically unenforceable. In a recent study, 80% of whistleblowers reported suffering personal reprisals for speaking up. In the most extreme cases, people believed they faced the prospect of prison.

Aussies seem to have defined levels of tolerance. Whistleblowing, when standing up against an organization or institution to protect vulnerable people, is accepted. Dobbing/snitching is seen as exposing people to the abuse of unethical organizations or institutions. For example, a major chain store that hikes prices on essential items is likely to draw attention, but somebody who is stealing a basic commodity, say food or clothing, is probably not going to raise flags.

Any progress with Australian whistleblowing programs will need to focus on providing an incentive to report and protection against retaliation, either by their peers or their company. Neither of these is prominent in current programs (unlike the US), but they need to be strengthened to overcome the cultural foundation.

Why civil service whistleblowers like me deserve far more protection

Josie Stewart

Prospect Magazine, 29 April 2024

I was sacked for leaking information about the government's bungled withdrawal from Afghanistan. I'm still trying to get justice for myself — and others.

Afghan refugees in Kabul. Image: US Air Force Photo / Alamy Stock Photo

TWO AND A HALF YEARS have passed since the withdrawal of Nato forces left the Taliban to sweep across Afghanistan, leading to the collapse of the Afghan government, a mad scramble by western allies to evacuate from Kabul, and untold suffering endured by the Afghan people.

Nearly a year has passed since Boris Johnson resigned from the House of Commons after being found by the Privileges Committee to have lied to parliament.

This week the full hearing of my employment tribunal case against the Foreign, Commonwealth and Development Office (FCDO) — intrinsically connected to both these events — will finally begin.

I worked at the British Embassy in Kabul from 2015 to 2017. As a civil servant in FCDO working back in London when, on my birthday, Kabul fell in 2021, I volunteered as part of the crisis response.

There, I found myself part of a system that cared much more about looking good than doing good. The failures of the evacuation are now well documented, so I will not dwell on them. But they were horrifying.

But I believed in our system of democracy. I knew that there was going to be a parliamentary inquiry, and I thought that government would be held to account.

Then I witnessed its denial, lies, and a complete lack of accountability. Our established systems of scrutiny were not working.

So I disclosed information to the BBC, which challenged Foreign Secretary Dominic Raab's and Prime Minister Boris Johnson's honesty. This information gave the press and parliament what they needed in order to hold the government to account.

But the BBC accidentally revealed my identity as its confidential source, and my professional world imploded. I remember the shock of someone suggesting that I might need a lawyer.

After a lengthy process leading to the inevitable outcome, I was sacked. My case against FCDO is for unfair dismissal under the Public Interest Disclosure Act (PIDA) provisions in our employment legislation: our whistleblowing protection laws. For me though, my case is as much about how Whitehall works — or should work — as it is specifically about whistleblowing.

Civil servants operate within a complex constitutional framework, a key characteristic of which is that they serve the government of the day. A consequence of this is that it's normal for them to feel uncomfortable with the political direction, or government incompetence. That's part of the job. But it shouldn't be normal for them to have to be complicit in government lies.

Do I think the rules of confidentiality in the civil service are important? Absolutely. Civil servants leaking information does real damage to trust between ministers and officials, and this matters. But I broke this important rule because other, even more important rules — like government not misleading parliament — were being broken.

Johnson was finally held accountable for misleading parliament. But the impact of his tenure on the professional and ethical environment of the institutions of government will not be reversed overnight.

I'm not pursuing my case because I have a messiah complex, because I'm bitter at having been sacked or because I want the attention.

I'm pursuing it because I want to help rebuild the sanctity of truth in government, and because I believe that civil servants must be able to speak truth to power. The current lack of

independent avenues of redress constrains this. The civil service is packed full of passionate, brilliant, dedicated people, working for all our benefit. "Your fight is our fight," they've told me, time and again. They need whistleblower protection as much as, if not more than, workers in any other sector. But, at the moment, it's not clear that they have it.

The government sees what I did as an existential threat: this is why they're fighting my case all the way.

Josie Stewart

The law says whistleblowers can be justified in making disclosures to the media if their disclosures were truthful, in the public interest, and reasonable in all the circumstances. But the legislation is complicated and open to interpretation. There's also very little precedent. This lack of clarity allows government to operate on the basis that civil servants must never pass unauthorised information to journalists. It allows them to follow national security vetting procedures — upon which jobs depend — that are incompatible with PIDA. It allowed them to sack me for telling the truth amid so many documented lies.

My ability to argue my PIDA claim fully has also been restricted by a preliminary ruling striking out parts of my evidence because they contravene Article 9 of the Bill of Rights, which ensures that what is said in parliament cannot be used in a court of law. This application of parliamentary privilege, itself intended to protect freedom of speech on matters of public interest, makes it harder for whistleblowers to expose lies told to parliament. My case is restricted in its scope because the issues my disclosures related to were considered by parliament. There is abundant irony in this, since the Foreign Affairs Committee, then chaired by current Security Minister Tom Tugendhat, stated in the report of their inquiry into the Afghanistan evacuation that "Those who lead the Foreign Office should be ashamed that two civil servants of great integrity and clear ability felt compelled to risk their careers to bring to light the appalling mismanagement of the Afghan crisis, and the misleading statements to Parliament that followed."

The last couple of years have been hard. It's been exhausting trying to figure out what I believe is right. I have doubted myself; it's hard not to when a huge institution that I value and respect and belonged to says that you lack integrity, that you're wrong. It will be hard hearing this in court.

But whatever happens, I am going to hold onto the fact that no tribunal can judge me to have been wrong in my actions. All they can do is conclude that my actions were outside the protection of the current law, and there's an important difference.

If that happens, I want my experience to make the case for legislative reform. I believe that a new statutory basis should be established for the civil service, introducing a secondary duty to uphold the public interest alongside the existing duty to the government of the day. To operationalise this, the leadership of the civil service should be made accountable to either parliament or to an independent standards body.


Sir Thomas More

The patron saint of civil servants and politicians, Sir Thomas More, famously stood up to the government of the day, in the form of Henry VIII — and got his head cut off. I believe it was my responsibility to challenge the government of my day. I hope to find that it was my right, too. And to keep my head, either way.

Josie Stewart is a former civil servant and current Associate Fellow at the Centre for Finance and Security at the Royal United Services Institute (RUSI)

Gag orders are still hampering federal whistleblowers, agency warns

Joe Davidson
Washington Post, 12 April 2024

DONALD TRUMP is no longer president, but Washington's problems with non-disclosure agreements remain.

The Office of Special Counsel (OSC) is forcefully instructing federal agencies and employees that NDAs do not supersede whistleblower rights.

But first, when writing about the OSC, an agency with a confusing name that's led by special counsel Hampton Dellinger, it's important to note that this is not a Justice Department special counsel, like Jack Smith, who is prosecuting Trump's classified documents case. OSC says its "primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices … especially reprisal for whistleblowing."

That's why OSC, an independent investigative and prosecutorial agency, is keen to let government folks know what NDAs can't do. In the past 12 months, the office has secured more than 25 actions from agencies to correct anti-gag order violations.

The Whistleblower Protection Enhancement Act is clear. "No agency can seek, through an NDA or otherwise, to chill such communications," according to an OSC statement last week. The headline on the statement was emphatic: "OSC Strongly Enforces the Prohibition Against Employee Gag Orders that Chill Whistleblowing."

NDAs are not prohibited, but agencies must inform employees that those agreements do not prevent them from reporting waste, fraud and abuse. "NDAs must inform federal employees of their overriding right to communicate with Congress, Inspectors General, and OSC," the OSC statement said.

Agencies use gag orders because "controlling the flow of information is the key to avoiding accountability that's unwanted," said Tom Devine, legal director of the nonprofit Government Accountability Project that works with whistleblowers. Gag orders are "more destructive than retaliation [against whistleblowers]," he added, "because the information never gets out in the first place."

Gag orders also have "huge consequences for the public, who need to know that our government is … serving in the people's best interest above all," said Joe Spielberger, policy counsel for POGO, the Project on Government Oversight. Among several Trump administration examples, Spielberger cited the 2019 "Sharpie-gate" controversy, when federal weather officials "were pressured by political appointees to undermine their own forecasters after Trump doctored the Hurricane Dorian map."

One of the cases cited by OSC involves a Justice Department agency that gagged National Association of Immigration Judges (NAIJ) union leaders.

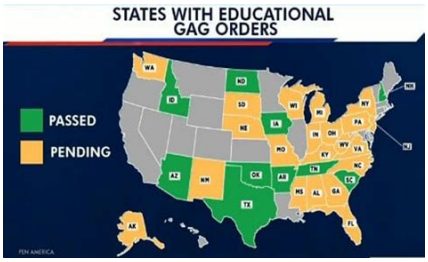
In a February email to New York-based immigration Judge Mimi Tsankov, the union president, and Judge Samuel Cole, the union's executive vice president in Chicago, Sheila McNulty, the chief immigration judge in the department's Executive Office for Immigration Review (EOIR), said they are prohibited from making public statements "without supervisory approval and any Speaking Engagement Team review your supervisor believes necessary."

That warning came after Tsankov in October told a Senate Judiciary immigration subcommittee hearing that "Democrat and Republican administrations share the failure of the DOJ's immigration court management," saying "immigration courts have faced structural deficiencies, crushing caseloads, and unacceptable backlogs for many years." Matt Biggs, president of the International Federation of Professional and Technical Engineers (IFPTE), NAIJ's parent union, cited Tsankov's congressional testimony as an example of giving "judges a voice" that's now silenced.

McNulty referred to a controversial and hotly contested Trump administration action that led to the decertification of the immigration judges' union, when she wrote "any bargaining agreement … that may have existed previously is not valid at present."

On November 2, 2020, the day before Trump, who waged war on federal unions, lost his reelection bid, the Federal Labor Relations Authority ruled that immigration judges are management employees precluded from union representation. That means, according to McNulty, they cannot speak out as union leaders because she considers their association to be a "group" and not a recognized labor organization. IFPTE has asked the Biden administration to reverse the immigration review office's "inappropriate and misguided application of the agency speaking engagement policy."

This must be an embarrassment to proudly pro-union President Biden, who reversed other anti-federal labor organization policies put in place under Trump.



McNulty's action drew heated reaction from three Republicans who often vote against union interests. "The Committee takes seriously the Department's effort to silence immigration judges," wrote Representatives Jim Jordan (Republican-Ohio) and Tom McClintock (Republican-California), chairmen of the House Judiciary Committee and its immigration subcommittee, respectively. In a letter to the attorney general, Sen. Chuck Grassley (Republican-Iowa) said any effort "to silence immigration judges … is absolutely unacceptable."

Grassley also noted that McNulty's order "failed to include the anti-gag provision as required by law."

That's a key point in the Office of Special Counsel's notice.

"One of the bright lines," Dellinger said during a telephone interview, "is that no federal workplace policy, including a nondisclosure agreement, can run afoul of an employee's right to report wrongdoing or public safety threats to Congress, inspectors general or my office." To that list of reporting venues, an OSC video adds "and the media."

Without naming any individual or the immigration judges' union, Dellinger's press release criticized Justice's immigration review office for "violations of the anti-gag provision." Following the OSC recommendations, the office agreed to email employees a revised policy that clarifies that they are not restricted from whistleblowing and to hold training sessions by the special counsel's office.

Nonetheless, during separate phone calls, Tsankov and Cole refused to discuss their situations. "I'm just not allowed to speak to you," said Cole, echoing Tsankov.

In recent months, the OSC has also successfully pressed other agencies to back down from NDA policies hampering employees.

OSC said the Defense Commissary Agency, which operates military groceries, agreed to withdraw "a policy requiring all employees to channel 'any and all' workplace issues through their supervisor and forbidding any contact with upper management without use of the chain of command."

And the Department of Veterans Affairs, according to Dellinger's office, agreed to rescind an employee's letter of reprimand that "did not contain the mandated language concerning whistleblower rights and improperly penalized the employee for not using official channels when he questioned agency practices."

Although the VA has a history of complaints from whistleblowers, VA press secretary Terrence Hayes said in response that a "top department priority is … building a culture where every employee feels empowered and unafraid to raise concerns without fear of reprisal. We welcome feedback here at VA — it makes us better — and we

encourage employees to come forward with their concerns without fear of reprisal."

He also said the "number of VA whistleblower retaliation cases reviewed by the Office of the Special Counsel has decreased by 42 percent since 2018."

Justice Department and Defense Commissary Agency officials did not respond to requests for comment.

Biggs called the Justice Department office's policy "an outrageous act of censure and an attack on freedom of the press and transparency."

"Intentionally or not," he added, the directive "resulted in a not-so-subtle message to rank-and-file immigration judges to think carefully before talking to congressional lawmakers as whistleblowers or otherwise."

Columnist Joe Davidson covers federal government issues in the Federal Insider, formerly the Federal Diary. Davidson previously was an assistant city editor at *The Washington Post* and a Washington and foreign correspondent with the *Wall Street Journal,* where he covered federal agencies and political campaigns.

Enron whistleblower warns reporting financial fraud is still too hard

Sherron Watkins
Fortune, 24 May 2024

TWENTY-THREE YEARS after Enron declared bankruptcy, little has changed regarding the culture of whistleblowing and the reporting of internal fraud. Despite 56% of finance professionals reporting that they have either spotted or suspected fraud within their organizations, the majority (81%) stay silent.

As seen by the recent devastations related to the Boeing scandal, today's whistleblowers are still facing immense pressure, tribulation, and opposition for coming forward — and in extreme cases this pressure leads to truly tragic consequences for individuals.

In 2001, I became a whistleblower, warning the CEO of Enron of suspicious accounting activity. In doing so, I exposed one of the largest corporate frauds in history. I didn't expect a gold medal — I was just doing my job — but ended up jeopardizing not only my job, but my career, livelihood, and reputation. In the fallout of my decision to come forward, I was accused of trying to destroy Enron, called a troublemaker, and stripped of all work assignments. Despite doing the right thing, I later learned that company executives had tried to fire me after I first alerted them of the issues. I was subsequently shunned by my peers and labeled as a "snitch."

Sharron Watkins

Whistleblower intimidation

When you look up the term whistleblower in the dictionary, synonyms include betrayer, snitch, rat, and tattletale — all negatives to describe someone who did the right but hard thing. And sadly, this is an accurate representation of how whistleblowers are not only perceived but treated. Data from Medius, a fraud detection software company I've partnered with, shows roughly a third (32%) of finance professionals have seen firsthand whistleblowers being called names to their faces or behind their backs due to their reports. Name-calling is just one example of the bullying and backlash that whistleblowers face, and one of many reasons finance professionals are scared to report internal fraud.

Everybody knows that the right thing is often the hardest thing to do, and it is almost never easy or straightforward. Whistleblowing involves a power dynamic favoring the organization over the individual, compounding the problem and making it even harder for employees to speak up. This matter is made even worse by the performative cultures within modern organizations that protect whistleblowers in theory, but not once a whistleblower comes forward to actually report.

From my own experience, and now having spoken to many people with a similar one, when an employee first becomes aware of something suspicious or fraudulent, they find themselves staring off a cliff edge as they mull reporting it. Fears of isolation and not being believed immediately come to mind, making employees question if it's better to just "be a team player," keep their heads down, and ultimately ignore their concerns to stay safe.

While a common fear that consumes those considering blowing the whistle is workplace retaliation, it doesn't stop there. Nearly half of employees say the legal system simply does not adequately protect whistleblowers.

Empowering whistleblowers — for real

For individuals to feel confident about coming forward, organizations must value whistleblowers, fostering a culture of protection and providing a community of support. It's also critical that whistleblowers feel empowered to report and have tangible evidence to support the fraud they've spotted or suspect. A resounding 93% of financial professionals reported that they would feel more confident and comfortable about blowing the whistle and reporting fraud if they had evidence. This evidence can come courtesy of AI tools that analyze thousands of previous transactions to identify anomalies that may represent suspicious or fraudulent activity.

In the years since I became a whistleblower, I've dedicated myself and my career to advocating for whistleblowers, building communities, and encouraging professionals to speak up and do the right thing. This is why I've dedicated my career to raising awareness of struggles whistleblowers face and the obstacles organizations may have in place that create a difficult environment for employees to come

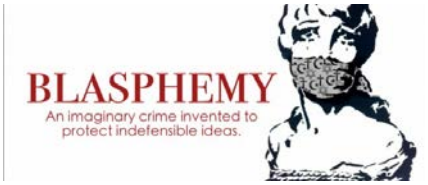
forward. While whistleblowers may feel alone, they are part of a powerful movement.

Sherron Watkins is a leadership and ethics advocate and is known as the Enron whistleblower. She is an internationally recognized speaker on the topics of ethics, corporate governance, organizational behavior, and the toxic label of whistleblower.

Secular blasphemy

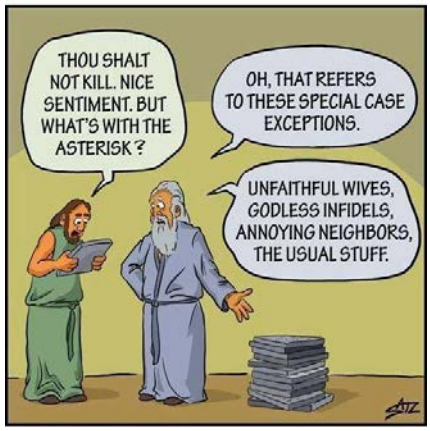
Hussein Ali Agrama

An edited extract from the chapter "After Muslims: authority, suspicion, and secrecy in the liberal democratic state," in Joseph Masco and Lisa Wedeen (eds.), *Conspiracy/Theory* (Durham, NC: Duke University Press, 2024), pp. 403–405, footnotes and references omitted



Paranoia and conspiracy theorizing … continue to feature largely in the public imagination today. If anything, they have taken an even more pronounced form as the clandestine activities of the state and its use of secrecy continue to massively expand. This has three connected consequences.

First, the growth and growing centrality of covert agencies for the state — the increasing importance of secrecy for state sovereignty at the end of the nineteenth and beginning of the twentieth centuries — has enabled a new form of secular blasphemy. There is an old and famous quip that heresy is no longer committed against the church but against the state. That centuries-old statement has since taken on different meanings, but since the beginning of the twentieth century it has come to have a special salience. The new form of blasphemy consists not of speaking out against the state, nor of critiquing its policies (no matter how severely), but in the betrayal of state secrets, which is seen as a fundamental threat to the sovereignty of the state and the loyalty it continues to demand. This is evidenced, in part, by the spate of espionage and state secrets legislation that were passed at the end of the nineteenth century and whose number only continued to grow throughout the twentieth. Perhaps that is why Julian Assange has been so relentlessly pursued by the world's most powerful liberal democracies — not simply because he made publicly available the classified diplomatic cables provided to him by Chelsea Manning but because his Wikileaks is an institutionalized platform for the betrayal of state secrets, which threatens the very practice of sovereignty. He is perhaps today's most reviled blasphemer, even as his blasphemy retains much allure. The United States calls for Assange to be tried for treason, even though, unlike Chelsea Manning and Edward Snowden, he is not an American citizen. One of the reasons why the betrayal of state secrets — even as relatively harmless as diplomatic cables (as if ambassadors are not always making assessments of the officials they deal with) — is seen as such a seditious and venomously threatening act has to do with how the status of the secret has changed with the Cold War. As anthropologist Joseph Masco notes, with the Cold War, the paradigmatic notion of the state secret became the nuclear secret. All state secrets were subsequently seen from the standpoint of nuclear ones, and thus were seen to carry with them some degree of existential threat.



This development relates to a second consequence. The enormous growth and proliferation of covert agencies, along with the expansive suspicion that they purvey, has facilitated a mutual and intensifying embrace of secrecy and suspicion by the state, of the state, and for the state ("if you see something say something"). And with that has come an expansion of what can count as a seditious act. Whether providing "material support to terrorism" for simply translating Islamist websites in the United States, or committing an "apologie du terrorisme" for refusing a moment of silence or not saying "je suis Charlie" in the wake of the Charlie Hebdo massacres in France, what can count as a potentially seditious act has broadened to seeming absurdity (according to a French official poster, a potential indicator of radicalization was if someone suddenly quit buying baguettes). And as the scope of sedition has expanded, so too has an implicit demand for loyalty to the state intensified. Inasmuch as blasphemy today consists in words or deeds that betray the state, the domain of blasphemy has vastly grown. With these tightly woven affective threads of secrecy, suspicion, spying, and potential sedition, we have a set of practices as potentially broad in scope and intricate in structure as the Spanish Inquisition. For example, in the wake of the Charlie Hebdo massacres, young Muslim children were put under scrutiny at their schools for harboring potentially seditious beliefs. In other words, we have become increasingly bound to the state not through democratic process, nor through contract, but

through revelation — of secrets and the potential dangers they conceal.

Finally, the constant generation of secret knowledge, the ongoing attempt to sustain that secrecy, the seeping into public consciousness of the existence of a guarded, hidden reality, and the (seductive) suspicion that this generates within the liberal democratic state — all this gives rise to *a conflation between the ideas of hidden truth and latent threat* in the public imagination as well as in covert agencies. In these agencies, whatever truths worth finding or having are not only those that are hidden but the ones related to potential threats, however that may be. Joseph Masco in his 2014 book *The Theater of Operations* has provided us with a thoroughly insightful discussion of this conflation and of the shifts in the structure and performance of secrecy as part of state governance in the wake of the atomic bomb and the rise of counterterrorism, in what he theorizes as "a secrecy/threat matrix as a core project of the national security state." I can only add a couple of thoughts to his theorization of the secrecy/threat matrix. First, within the public imagination, this conflation of hidden truth with latent threat can take many forms. For example, it can take the form of anxiety about the state itself, such as the thought that there is a deeper, shadow state that truly governs its actions, as the now numerous writings, both popular and academic, concerning "the deep state" attest. But it can also take the form of an intensified focus on particular groups seen as harboring ideas or plans that might threaten the state and the society that it claims to protect — as seen in the constant discussion in both popular and academic circles about the dangers of "radicalization." Here we see how the twin dangers — that is, the notions of the deep state and of radicalization — are structured by the same feature of the public imagination that conflates secret truths with latent threats. That is to say, both the deep state and radicalization are less truths than constructs arising out of the same imaginative structure. This is such a broad and enduring feature of liberal democratic imaginaries that we might call it structural. It is a space where secret truth and latent threat are conflated together, and that can be and has been occupied by different groupings, from anarchists, Jews, and communists in the past, to Muslims today.

Whistleblower laws that protect lawbreakers

Maureen Tkacik
The American Prospect, 30 April 2024

The late whistleblower John Barnett described Boeing as a psychological torture chamber for anyone who cared about safety. A 2000 law makes fighting back nearly impossible.

Boeing employees open the tail of a Boeing Dreamlifter on their campus in North Charleston, South Carolina, May 30, 2023

SECTIONS 47 and 48 of a 787 Boeing Dreamliner fuselage consist of the back four rows of the plane's passenger seating, bathrooms, meal prep area, flight attendant seating, and rear exit doors. "Not the kind of thing you could sneak out on the back of a pickup truck," says Rob Turkewitz, an attorney who represents the estate of John Barnett, the whistleblower who was found dead last month the morning he'd been scheduled to finish a deposition in his whistleblower lawsuit against the company. And yet around 2015, someone caused a massive hunk of this fuselage to vanish from the Material Review Segregation Area (MRSA) of the Charleston, South Carolina, 787 assembly plant, without leaving any kind of paper trail. As near as Turkewitz and his former client have been able to figure, no one ever determined what became of the thing.

MRSA was supposed to be a sanatorium of sorts for malfunctioning airplane parts. Damaged, defective, or otherwise "nonconforming" parts were sent there to be tagged, logged, and painted red, so that no one would confuse them for parts that could be installed on an aircraft. MRSA was also understood as a kind of sanatorium of defective personnel, where blacklisted quality managers like Barnett were sent as punishment, because it felt more like an inventory management job than the awe-inspiring enterprise of building an airplane.

But Barnett quickly realized that MRSA *was* an extremely central part of another kind of enterprise at Boeing South Carolina: the mad dash for parts to install on airplanes that managers were under pressure to get out the door as quickly as possible.

Barnett, known as "Swampy" among friends, had previously clashed with bosses who wanted him to allow mechanics to sign off on their own installation work without properly documenting the procedures in Boeing's official Velocity system. This was not only unsafe and shortsighted, it was potentially felonious under Section 38 of the United States criminal code, which made "any materially false writing, entry, certification, document, record, data plate, label, or electronic communication concerning any aircraft or space vehicle part" a crime punishable by up to 15 years in prison if it is determined that the act compromised the safety of the airplane. Mechanics had been scheming to save time by skipping what they saw as unnecessary paperwork. "This sounds great, but we've got to make sure that the processes are changed to support what y'all want to do," he said carefully, explaining that the Federal Aviation Administration needed to sign off on any procedural changes, and that as far as the agency was concerned, "the paperwork is just as important as the aircraft." The whole room had burst out laughing.

Now he knew why. He asked security for an audit of how many keys it had made of the MRSA parts cage, and discovered there were hundreds of keys floating around. Every one of those mechanics' bosses had been illegally raiding the cage for defective parts to install on new airplanes, without documentation. They then lobbied the quality bosses to pressure Barnett's colleagues to falsify or "pencil whip" documents about the parts that had gone missing. Barnett himself had been instructed to "pencil whip" investigations on no fewer than 420 missing nonconforming parts.

Disinclined to commit any felonies on behalf of the bosses who'd spent the past six years terrorizing him, Barnett sent a couple of inspectors out to the assembly lines. Lo and behold, they found dozens of red-painted defective parts installed on planes. But there were no signs anywhere of the missing 47-48 section, or hundreds of other parts that had gone missing from MRSA. "You know, we really need to find all these … lost nonconforming parts," he remarked at his next big meeting, hoping that with 12 managers present it would be harder to blow him off. "And if we can't find them, any that we can't find, we need to report it to the FAA."

No one burst out laughing, but it wasn't because they were taking him seriously.

"We're not going to report *anything* to the FAA," a supervisor declared emphatically.

WE ARE OFTEN TOLD THAT THE PROBLEM with corporate crime is that the laws aren't explicit enough, or that there simply aren't enough *of* them, to convince a jury to prosecute high-level executives. This is generally a massive cop-out, a distraction to justify a permanent state of impunity granted to corporate malefactors. But in aviation, it is literally the opposite of the truth.

Whistleblower laws exist to protect Swampy Barnett and other employees who point out systemic abuses and can testify to the crimes committed. Those laws are mostly uniform across industries, except in aviation. There, a 2000 law called AIR 21 creates such byzantine procedures, locates adjudication power in such an outgunned federal agency, and gives whistleblowers such a narrow chance of success that it effectively immunizes airplane manufacturers, of which there is one in the United States, from suffering any legal repercussions from the testimony of their own workers.

Very few aviation industry employees even know about AIR 21; Barnett, despite an encyclopedic knowledge of most aviation regulations, had never heard of it until he was well on his way out. Other whistleblowers, including Sam Salehpour, the 787 quality engineer who told Congress earlier this month about his concerns with the Dreamliner, are coming forward. But unless AIR 21 is reformed, their complaints are likely to fall into the same graveyard that's visible in any careful study of the South Carolina court dockets.

Before his death, Barnett testified that he was asked to break the law at least once or twice a week during his six years at Boeing South Carolina, but that may have been an understatement. Almost nothing Barnett saw during his tenure at the plant conformed with Boeing policy as he'd been trained to enforce it, he said in a deposition just a month ago.

Tall stacks of laws, both civil and criminal, govern the aviation industry: Section 38 of the United States criminal code, the Federal Aviation Administration charter, and the production certificate that required all commercial airplane manufacturers to maintain a detailed record of the build and maintenance of each plane in a quality management system called AS9100. "If you violate a Boeing Process Inspection," Barnett explained in the deposition, "they're so intermingled, that chances are you're violating four or five of those. And by violating those, you're violating AS9100, and you're also violating the FAA requirements."

As the deposition makes clear, forcing employees to constantly break the law required Boeing to foster a peculiar culture. Ignorance was one of its main tenets: Barnett described his superiors marching over to his office in packs of five, arms folded across their chests, demanding he show them the precise sections of the Boeing process protocols and FAA production certificate they were violating. One boss walked around the production floor snapping pictures of flags on parts and calling him to inquire whether or not they conformed, solely to harass him; one day, he counted 29 calls. Another boss regularly gave him assignments, then reassigned his inspectors after he left for the day so his team would chronically blow deadlines.

Boeing quality engineer Sam Salehpour takes his seat before testifying at a Senate Homeland Security and Governmental Affairs subcommittee hearing to examine Boeing's broken safety culture, April 17, 2024, in Washington.

Objectively, Barnett knew none of it was personal. During one dismal performance review, his boss actually broke down and admitted he'd been ordered to give him a failing grade by a higher-up he barely knew. Later, Barnett saw an email assessment of him written by another boss with whom he'd had only limited interactions. While Barnett was "technically, one of the best," the email concluded: "In a candid way, BSC quality leadership would give hugs and high fives all around at his departure." The pariah treatment took a toll on Swampy's psyche: "Why me? Why am I being singled out?" he recalled asking colleagues during the deposition.

But he wasn't alone. Once, a human resources officer asked him to look over a "weak" performance improvement plan the company had used to terminate William Hobek, another quality manager who had refused to "pencil whip" the lost section 47-48. The HR officer confided that he'd been feeling uneasy about the justifications corporate was using for the firing. A fellow quality manager named Cynthia Kitchens, whose career had reached a similar dead end, confided in Barnett that she'd been in the Boeing doghouse ever since she'd filed an ethics report on a manager named Elton Wright, after he shoved her against a wall and yelled that Boeing was "a good ol' boys' club and you need to get on board" when she

balked at corner-cutting he wanted her to endorse. A quality engineer named John Woods had been terminated for refusing to rubber-stamp an abridged protocol for repairing the plane's carbon fiber fuselage that he believed violated FAA regulations. (The FAA ultimately backed Woods up on that.)

John Barnett

Sadly, Barnett was not alive to watch the congressional testimony of Salehpour, who voiced grave concerns about the structural integrity of those same carbon fiber fuselages, due to the very corner-cutting practices Woods had called out. Just like Barnett, Salehpour's boss had called him constantly to harangue him for being too honest, and his superiors went to great lengths to prevent him from communicating with colleagues who they suspected might concur with his conclusions. Appearing before the Senate Permanent Subcommittee on Investigations, Salehpour described an unsettling evening when his brand new tire began to flatten on the drive home. When he pulled over at a body shop, a mechanic discovered a nail. Just so you know, the mechanic told him, you didn't run over this nail; it's *not an accident*.

Notably, Boeing bosses gave nearly identical treatment to two safety-conscious 787 engineers who worked in the Organization Designation Authorization program, in which Boeing engineers perform most of the more technical aspects of regulating Boeing on behalf of the FAA, which is supposed to act as those engineers' direct boss. But after two ODAs insisted Boeing comply with new agency guidance regarding the plane's onboard computer networks, a manager gave both dismal performance reviews, while admitting that the order to do so came from higher-ups, who were angry that complying with the laws had delayed aircraft deliveries. When their union filed a formal complaint documenting the retaliation, Boeing threw it out on the grounds that the reviews didn't meet the company's threshold for retaliation.

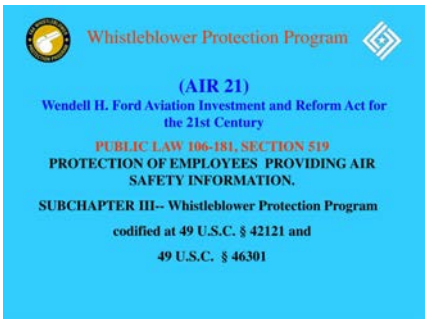
In other words, Boeing wasn't just retaliating against its own employees, but the de facto employees of its own regulator.

AS WE'VE EXPLAINED BEFORE IN THESE PAGES, a functional Department of Justice could easily rein in Boeing's culture of lawlessness, but as yet no attorney general has appeared interested in doing any such thing. Bill Barr was appointed to the attorney general post about a month before the second fatal 737 MAX crash, from a senior post in the litigation department of Boeing's criminal defense firm Kirkland & Ellis. He formally recused himself from the investigation but oversaw a department that transferred the case to an inexperienced Texas prosecutor who left the agency for a partnership at Kirkland & Ellis shortly after granting the manufacturer one of the most corrupt sweetheart "deferred prosecution" deals of all time.

Despite a compelling lawsuit filed by the families of 15 MAX victims alleging that the deferred prosecution agreement was illegal under the Victims' Rights Act, Barr's successor Merrick Garland has shown no desire to reopen the investigation, even arguing that the families did not qualify as "victims" of Boeing's fraud because only the FAA had been truly victimized. In March, a federal judge publicly rebuked the DOJ for failing to take seriously the reputational damage its conduct throughout the Boeing case was inflicting on the agency; last week, after a five-hour meeting with DOJ officials, the families' lead attorney Paul Cassell declared that nothing had changed.

"The meetings with the Department of Justice were what we feared — all for show and without substance," said Cassell, who is perhaps best known for using the Victims' Rights Act to unearth the emails and agreements that had led to Jeffrey Epstein's unusual 2008 non-prosecution agreement. "It is clear that they are only interested in seeing through the rigged deferred prosecution agreement they brokered with Boeing without the involvement of the very families whose lives were shattered due to the company's fraud and misconduct."

But if Boeing is a beneficiary of legal corruption, it also wields a powerful tool against the countless witnesses to its crimes in the form of the AIR 21 whistleblower statute. Because of this law, the exclusive legal remedy available to aviation industry whistleblowers who suffer retaliation for reporting safety violations involves filing a complaint within 90 days of the first instance of alleged retaliation with a secret court administered by the Occupational Safety and Health Administration that lacks subpoena power, takes five years or longer to rule in many cases, and rules against whistleblowers an astounding *97 percent of the time*, according to the Government Accountability Project, a nonprofit whistleblower law firm that is lobbying with aviation safety advocates to overhaul the statute.



The law also requires whistleblowers to attempt to resolve their grievances internally before they file complaints. As Barnett pointed out in his deposition, the average ethics complaint at Boeing took at least six months to work its way through the system. "So automatically, if you go to HR with an issue, and they take eight months to investigate it and they come back and tell, no, you're wrong, and then you want to go file an AIR 21 complaint, you missed your 90-day window."

The South Carolina court dockets are littered with failed lawsuits filed by whistleblowers who didn't make the 90-day cutoff. Woods attempted to sue Boeing after he was terminated for dis-

ability discrimination; Hobek alleged age discrimination; Kitchens alleged sex and disability discrimination, as she was sick with cancer when she was terminated in 2016. All three whistleblowers lost, even though an FAA investigation had fully vindicated Woods's concerns. Both Hobek and Kitchens were actually ordered to reimburse Boeing's legal fees; a judge denied Boeing's motion to force Woods to pay its $10,500 in legal fees on the grounds that he had no assets, liquid or otherwise, with which to pay them.

Turkewitz says that, of the dozens of Boeing South Carolina employees he's met over the years, only Barnett was savvy, meticulous, and fast-moving enough to bring an AIR 21 case capable of jumping through all the hoops — and even then, it took seven years. Over that period, Barnett worked on the case, cared for his wife until she died of cancer in 2022, cared for his elderly mother, and raced cars as a hobby. He filled out a few job applications, but he found himself unable to submit them, traumatized by the possibility of finding himself in another workplace hell like Boeing South Carolina.

"John's boss always told him he was going to push him till he broke, and that's what they did," says Turkewitz, whose therapist has been helping him come to peace with the fact that Barnett likely *did* kill himself, and that his initial denial was in part influenced by guilt for having forced his client to relive six and a half years of daily micro- and macro aggressions in a grueling deposition. He's also come to think the "mystery" of Barnett's death is just a subplot of a much bigger problem. "Boeing South Carolina is a criminal enterprise, and we need to be asking ourselves why no one is in jail over what's happened there," Turkewitz said.

To be fair, the 787 has avoided the kind of mass fatality events and terrifying near misses that have plagued the 737 MAX, though a Japanese Dreamliner was seen billowing smoke due to a hydraulic fuel leak as it landed in Sapporo last week. And a terrifying nosedive last month that injured 50 passengers on a 787 flight from Sydney to Auckland, attributed to a flight attendant accidentally hitting a cockpit seat switch, seems to have been at least partially exacerbated by production or quality snags. Salehpour maintains it's just a matter of time before a massive fuselage failure caused by accumulated stress on the carbon composite structure forces Boeing to ground the plane again.

BOEING, FOR ITS PART, SHOWS NO SIGN of increased reverence for the law. In March, the National Transportation Safety Board said Boeing had refused to provide documentation on the hasty re-installation of the door plug that flew off Alaska Airlines Flight 1282 in January; Boeing countered that the job simply hadn't been documented, a serious felony in and of itself. But in the Senate hearing earlier this month, former 737 factory manager Ed Pierson said an anonymous whistleblower had provided him with those very documents. "I'm not going to sugarcoat this, this is a criminal cover-up," he told the committee. No law enforcement action has yet been taken, though the Justice Department has opened a criminal investigation.

Boeing's CEO David Calhoun has resigned, but over the weekend *Fortune* reported his replacement could be Patrick Shanahan, the architect of the ethos that governed the 787 program and its flagship plant in South Carolina, and a man one longtime Boeing executive I know described as a "classic schoolyard bully." Shanahan was in line to become Donald Trump's defense secretary before word leaked that he emphatically defended his son after the then 17-year-old beat his mother — Shanahan's ex-wife — bloody and unconscious with a baseball bat. The assault and others in the aviation executive's mutually abusive domestic life would later prompt Shanahan to withdraw his nomination. Shanahan was hired last year as the CEO of Spirit AeroSystems, the contractor that made the door plug that fell out of Alaska Flight 1282.

Alaska Flight 1282: the missing door

The market fundamentalist business press has been working overtime to drown out widespread calls for the next CEO to be an aerospace engineer with its own counterintuitive nominations: Hey, how about the CEO of General Electric? Or if Larry Culp is out of Boeing's league, what about the MBA who leads that South Florida manufacturer of HVAC equipment and has done such a great job serving on the Boeing board? Anyone but an "aviation romantic," sniffed *The Wall Street Journal* oped page's most doctrinaire Chamber of Commerce mouthpiece, Holman Jenkins, last week.

Unbelievably, Ryanair CEO Michael O'Leary just gave an interview suggesting Boeing's next CEO should be an *accountant*, and admitted that he'd miss lame-duck CEO Calhoun, who majored in accounting in undergrad.

Later that afternoon, I got a text message from one of Barnett's old Boeing co-workers who'd been fired from the Charleston plant for reporting a safety risk created by shoddy manufacturing. An FAA investigation had vindicated most of the whistleblower's allegations, only after they'd withdrawn their AIR 21 complaint out of fear Boeing would force them to pay legal fees. Inside the whistleblower's text was a photo of a wheel missing two lug nuts; the car had been mysteriously wobbling, so they'd pulled over to check. It had been years since they'd left the company, but they could not shake the sense that someone, somewhere was still trying to exact revenge on them for speaking out. "If anything happens," they told me, not for the first time, "I'm not suicidal."

Whistleblowers Australia contacts

Postal address PO Box U129, Wollongong NSW 2500
Website http://www.whistleblowers.org.au/
Facebook https://www.facebook.com/Whistleblowers-Australia-Inc-172621456093012/

Members of the national committee
http://www.bmartin.cc/dissent/contacts/au_wba/committee.html

Previous issues of *The Whistle*
https://www.bmartin.cc/dissent/contacts/au_wba/whistle.html

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

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

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

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

The Whistle
Editor: Brian Martin, bmartin@uow.edu.au
Phone 02 4228 7860
Address: PO Box U129, Wollongong NSW 2500
Thanks to Cynthia Kardell and Lynn Simpson for proofreading.

WBA conference and AGM

Whistleblowers Australia's annual conference will be held in North Parramatta on Saturday 16 November and the annual general meeting on Sunday the 17th. Cynthia will be sending detailed information via email, and there will be a notice in the October *Whistle.*

Other whistleblowers

Much attention has been given to the horrendous treatment of David McBride, attention that is fully warranted. Yet we should not forget that there are many other whistleblowers, ones whose cases are not in the public eye. Some of them remain anonymous. At least that way they are less likely to end up in gaol.

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