

Sentencing Whistleblowers in Australia

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It evidently is not on. Disclosing a state of affairs surrounding the Prime Minister of Australia, through revealing a secret scholarship that his daughter received is something that can land you a sentence. It shows the absurdity of understanding the quality of information, and its effect. Such material was hardly even of the order of hacked files from Department of Defence servers. It did not involve an individual carting off the nation's pearls on national security.

But the key was that it happened at all. It involved a young journalist from the University of Technology Sydney (UTS) discussing a form of conduct on the part of Tony Abbott that would have been relevant to his role as an office holder. Newman had accessed student records revealing that Abbott's daughter had received a secret scholarship from the Whitehouse Institute of Design to the value of \$60,000. (The scholarship was kept secret from students and senior staff.)

This brought obvious questions into play. Was it awarded on merit? (Such merit is hard to identify when there is only one candidate.) All it took was one meeting with college owner Leanne Whitehouse, and the bursary was in the bag. This did cause consternation to Whitehouse Institute staff such as former employee Melletios Kyriakidis, who suggested that, "Even from her class, I could name 10 people more deserving either for merit or financial need or both." [1]

It was all opportune - Newman, working as a part-time librarian at the Sydney-based institute, accessed the internal computer system. Abbott's daughter, Frances, was working at the Melbourne campus of the same institute, though she lacked any specific role.

Such papers as *The Australian* smelled a rat, but if they did, that rat was emitting a strange odour. Grand claims were made of Newman's role in a plot that was intended to sabotage the Prime Minister. She had been part of a dirty scheme that involved "access to the files of Ms Abbott and more than 500 other students." [2] Chris Graham, the owner of *New Matilda*, and contributing editor Wendy Bacon, were seen as part of this grand scheme, with Newman keen on "talking tactics" with them on the subject of the obtained material. [3] Such is the lot of those whose fingers find themselves in the tills of power - there is always a conspiracy afoot to find them.

In September, Newman pleaded guilty to breaching the relevant section of the NSW Crimes Act prohibiting access to restricted data held on a computer. [4] She was due to be sentenced on October 23, but it was decided that the sentence be deferred for another month.

While the sentencing awaits, the punishment of such conduct demonstrates, yet again, the woeful state of whistleblower protection in the country. Loopholes abound in the laws.

Exemptions and dispensations are replete through legislation dealing with national security, freedom of information and employment. But the most notable thing about Newman's case was that she fell into the loophole of loopholes, not being a government employee.

"If Newman had been working in a government organisation and had made an equivalent revelation from public service records," argues the Australian human rights lawyer, Julian Burnside, "she would likely have been able to claim whistleblower protection." [5]

Instead, critics can point to the problems that this verdict will do - create a curious, but troubling variant of political prisoner on Australian soil. This is not as extreme as it sounds. Globally, a species of detained individual has become the norm, be it such individuals as Jeremy Hammond and Barrett Brown in the context of exposing the behaviour of Stratfor, or more conventional agents like John Kiriakou who spend time behind bars because of revealing the use of torture by the Central Intelligence Agency.

The barrister representing Newman has had to resort to working within the most unsatisfactory rules, suggesting that the case was "very much at the lower end" in terms of seriousness which did involve a breach of "her employer's trust". Nor did the disclosed material reveal "overtly sensitive" details, be they in the nature of bank account details or an address. She undertook her conduct in a state of ignorance of the law, and did not gain the material "seeking personal notoriety".

The defence from Payne seemed meek, taking a leaf out of the book of defendant cripples and the confused. That's usually done by rubbishing your client in the hope she gets a lesser sentence. She was, for instance, immature, suggesting that whistleblowing is something children or less mature do. She did not see the consequences of her action. In what must be an old fob to the good old values of exposing a public interest case, Payne did everything to suggest that Newman was somewhat crazed, sincerely believing in that distant voice called justice. "She sincerely believed she was acting in the public interest and was unaware she was committing an offence."

It has been left to far more robust positions to be taken in the public domain, be it from such publications as *Crikey*, who claimed that Newman "should be applauded for her bravery" in blowing "the whistle on a secret scholarship awarded by a private design school to Tony Abbott's daughter". [6] Facebook groups and online petitions for her release have been actively gathering signatures and supporters. The Change.org petition seeking to "Stop the pursuit of Freya Newman" calls for enshrining "freedom of the press in the Australian constitution."

The person who has ambled off merrily into the political sunset is Prime Minister Abbott, who seems more Teflon-like the longer he ambles through office. That a young journalist may well spend time behind bars for revealing a deal of good disgrace is suggestive of a man who holds ideas of liberty in contempt. All this, despite claiming before the conservative Institute of Public Affairs (IPA) in August 2012 that he, and his party, "stand for the freedoms which Australians have a right to expect and which governments have a duty to uphold." [7] This is the *raison d'être* of retribution - to punish disclosures, however small, that give the game up on the lie of governance.

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Notes

- [1] <http://www.educationcareer.net.au/news/freya-s-freedom-decided-soon>
- [2] <http://www.theaustralian.com.au/national-affairs/police-charge-librarian-with-hacking--frances-abbott-scholarship-files/story-fn59niix-1227014638264>
- [3] <https://newmatilda.com/2014/08/02/australian-accuses-new-matilda-role-plot-bring-down-abbott>
- [4] <https://newmatilda.com/2014/09/18/freya-newman-pleads-guilty-over-frances-abbotts--60k-secret-scholarship-leak>
- [5] <http://http://www.theguardian.com/commentisfree/2014/sep/22/freya-newman-the--whistleblower-behind-frances-abbotts-scholarship-should-be-thanked-not-punished>
- [6] <http://www.crikey.com.au/2014/10/23/crikey-says-we-stand-with-freya/>
- [7] <http://www.themonthly.com.au/issue/2014/september/1409493600/david-marr/freedom-abbott>

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