

# In the Name of Security – Secrecy, Surveillance and Journalism

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Anthem Press  
An imprint of Wimbledon Publishing Company  
*www.anthempress.com*

This edition first published in UK and USA 2018  
by ANTHEM PRESS

75–76 Blackfriars Road, London SE1 8HA, UK  
or PO Box 9779, London SW19 7ZG, UK

and

244 Madison Ave #116, New York, NY 10016, USA

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*British Library Cataloguing-in-Publication Data*

A catalogue record for this book is available from the British Library.

ISBN-13: 978-1-78308-769-3 (Hbk)

ISBN-10: 1-78308-769-2 (Hbk)

This title is also available as an e-book.



## Chapter 5

# WHEN ONE PERSON'S NOBLE WHISTLEBLOWER BECOMES ANOTHER'S POISONOUS LEAKER

Matthew Ricketson

### **Introduction**

The rise of the surveillance state simultaneously hinders and helps the practice of investigative journalism. It also hides from view a perennial and very human problem – the interaction between journalists and their sources. There is a good deal packed into those two sentences, so let me explain. The advent of web 2.0 this century has ushered in a range of new digital communication technologies that make it possible for a range of state actors, such as police and intelligence agencies, to monitor citizens, including journalists, through their online activity, whether on their computer or smartphone. The extent to which our lives can be tracked via our digital footprint raises questions in itself, but they are magnified for journalists who are duty-bound to scrutinise and even challenge those in charge of the surveillance. The perennial weighing of the needs of national security against civil liberties has tilted inexorably toward the former in recent years, following the 9/11 terrorist attacks and more recently the rise of Islamic State.

These and other developments that hinder the practice of investigative journalism are discussed elsewhere in this book and so will not be the focus of this chapter. The same digital communication technologies, though, have helped investigative journalism immeasurably as they have enabled the leaking of massive caches of documents that dwarf previous landmark leaks, such as the Pentagon Papers. This practice was pioneered by WikiLeaks, beginning in the mid-2000s and achieving global impact in 2010, with the release of logs about the wars in Afghanistan and Iraq that followed the 9/11 attacks. Where the Pentagon Papers comprised about 2.5 million words, the Afghan and Iraq War Logs amounted to an estimated 300 million words (Harding 2011, 5).

Only excerpts of the Pentagon Papers were published by the *New York Times* when they were leaked by Daniel Ellsberg to the newspaper in 1971 (US National Archives 2011). The practice was cemented in 2013 when Edward Snowden, a former contractor to the National Security Agency (NSA) in the United States, leaked thousands of pages of NSA documents to independent documentarian Laura Poitras and freelance journalist Glenn Greenwald that were published by the *Guardian* (Greenwald 2014). He also leaked documents to national security journalist Barton Gellman. There is uncertainty about the exact number of documents that Snowden leaked, but Gellman later wrote the leaks consisted of 'roughly 160,000 intercepted e-mail and instant-message conversations, some of them hundreds of pages long, and 7,900 documents taken from more than 11,000 online accounts' (Gellman et al. 2014).

The phenomenon of the massive document dump reached its apotheosis – at least for now – in 2015 when an anonymous source leaked 11.5 million documents stored in 2.6 terabytes to two journalists from the German newspaper *Süddeutsche Zeitung*, who teamed with 400 journalists from 80 countries who were members of the International Consortium of Investigative Journalists (ICIJ) to produce what became known as the Panama Papers when they were released in April 2016. The content of the disclosures from these various document dumps have been of global public interest and importance. These documents have shone a light on what appear to be war crimes committed by US soldiers in Afghanistan and Iraq. They confirmed the extent to which the NSA in the United States and the Government Communications Headquarters (GCHQ) in the United Kingdom have been surveilling citizens at home as well as abroad, often with the cooperation of giant technology companies, such as Google and Facebook.

They took us inside the operation of a large provider and manager of offshore shell companies, Mossack Fonseca, which revealed staggering amounts of income not being declared and, worse, large sums of money being routinely laundered by criminals. The millions of documents exploded the conventional wisdom that the secret offshore company industry was a minor part of the economic system; rather, it *was* the system, as Luke Harding, an English journalist who has worked on all three document dumps (WikiLeaks, Snowden and the Panama Papers) writes in the introduction to the first book documenting the Panama Papers project: 'Those who dutifully paid their taxes were, in fact, dupes. The rich, it turned out, had exited from the messy business of tax long ago' (Obermayer and Obermaier 2016, vii).

### **Journalist–Source Relationships**

These developments, both positive and negative, have been of great importance for the free flow of information that is integral to the practice of journalism.

The notion that we should be sceptical about secretive governments and their agencies, or secretive companies like Mossack Fonseca and their clients, is undoubtedly appropriate, as history distant and recent repeatedly shows. Such scepticism, though, needs to be extended to journalists and to their sources. Nobody would suggest that journalists or their sources are free of human foibles or vices. That is, they can make errors or, worse, may act in bad faith. This issue is of just as much importance as the impact of recent technological developments on journalism, as it has the capacity to undermine public trust in journalism. Such trust is necessary given the contested and contingent terrain in which journalism operates, but it is a fragile property and there is evidence, from many opinion polls over many years in Australia at least, that it has been weakened by poor journalistic standards (Finkelstein 2012, 103–108; 378–386). It is an issue that receives less attention in the academic and professional practice literature than does the threat posed to journalism by state surveillance or draconian national security legislation.

Just why this might be is not entirely clear, but it may be tied to the relative power of the state and the news media. The former has the power to legislate and has the apparatus of police and intelligence agencies, as well as the public service at its disposal. The latter has only the power to expose, ridicule or influence. Precisely because journalists are in the storytelling business, their greatest weapon is their ability to craft a narrative of governments and police and intelligence agencies as continually overreaching or keen to cry national security to cloak their errors. Those individuals risking their livelihood, or even their lives, to blow the whistle on corrupt or incompetent governments are portrayed as motivated by a desire to seek justice and reveal the truth. The narrative of the noble whistleblower has been a compelling one for many years, partly because it has been told by those skilled in storytelling and partly because there is an important half-truth at its core. Governments do make mistakes; some governments are corrupt. Equally, sometimes the truth is more complicated. The issue being spotlighted in the media may not be simply one of incompetence or corruption, and the whistleblower, too, may be blind to the complexities of the issue. They may have only partial knowledge about what is happening inside the government agency or, worse, they may have an axe to grind and so leak material selectively. This messy, muddy complexity is far harder to mould into an appealing narrative, either to inform the public or to persuade those potential whistleblowers inside government agencies to take the risk of giving journalists material. As Janet Malcolm once acidly observed, a fundamental rule of journalism is to tell a story and *stick to it*: ‘The narratives of journalism, like those of mythology and folklore, derive their power from their firm undeviating sympathies and antipathies. Cinderella must remain good and the stepsisters bad. ‘Second stepsister not so bad after all’ is not a good story’ (Malcolm 1994, 69).

To extend Janet Malcolm's mythology analogy, journalists habitually present themselves as David in battle against Goliath, but the phone-hacking scandal and the British government's reaction to it alert us to the possibility that News Corporation is as much a Goliath as a David. When public revulsion erupted after the *Guardian* revealed in mid-2011 that *News of the World* journalists had hacked into the mobile phone of a missing 13-year-old school-girl later found murdered, the Prime Minister, David Cameron, told parliament that neither his government nor the opposition had wanted to confront the reports in the *Guardian* about phone-hacking because 'party leaders were so keen to win the support of newspapers, we turned a blind eye to the need to sort this issue, to get on top of the bad practices, to change the way our newspapers are regulated' (Cameron 2011).

News Corporation is by no means the first media company to engage in the kind of activities that the news media is committed to exposing, but in the second half of the twentieth century and into the twenty-first, the company's chair, Rupert Murdoch has, as Rodney Tiffen wrote, 'wielded power impressively to help his favoured politicians and his own commercial interests. His power, though, has more often diminished rather than benefited the quality of our democratic life' (Tiffen 2014, 327). He describes phone-hacking as the 'biggest media-related scandal in the history of English-speaking democracies' (Tiffen 2014, 325).

Tiffen's analysis, along with revelations in accounts of the scandal in particular (Watson and Hickman 2012; Davies 2014) and Murdoch in general (McKnight 2012) are certainly deeply disturbing, but that does not mean all News Corporation journalists engage in phone-hacking or that they have not done good, or even outstanding, journalism over the years. They have. And just to underscore the need for us to move beyond simplistic binaries of 'noble whistleblower' and 'crusading journalist' versus 'corrupt government' and 'clandestine intelligence agency', it is important to remember, first, that it was journalists from one news organisation, the *Guardian*, who revealed that journalists in another news organisation were engaged in endemic phone-hacking; second, that during the two years from 2009 to 2011, the newspaper's investigative journalist, Nick Davies, published more than 100 stories about phone-hacking, while the rest of the media in England ignored or downplayed the revelations.

Not surprisingly, Murdoch's newspapers were keen to keep it quiet, but other media outlets were incurious partly because to a greater or lesser extent they were engaged in similar practices and partly because they did not want a fight with News Corporation, a globally powerful and frequently vindictive media company (Davies 2014; Tiffen 2014).

*Journalists and whistleblowers*

It is important, then, to examine the issues surrounding the relationship between whistleblowers and journalists through a more finely calibrated lens. First, the term whistleblowing is open to misinterpretation, or to be more precise, mislabelling. The term connotes someone who reveals previously hidden information about a person or organisation that shows them engaged in wrongdoing. The whistleblower is usually, though not always, an anonymous or confidential source because if their identity were to become known, they might well suffer reprisals. Daniel Ellsberg and Edward Snowden are rare in being publicly identified whistleblowers. Ellsberg was indicted under the 1917 Espionage Act when he released the Pentagon Papers, and Snowden was forced to flee the United States to avoid being indicted under the same act. The case against Ellsberg was eventually dropped because the Nixon administration had engaged in criminal conduct to discredit him (Emery 1994, 354), while Snowden has been given refuge in Vladimir Putin's Russia but is unable to return home. A journalist's agreement to print or broadcast material provided under the cloak of anonymity means the journalist will refuse to divulge the source's identity, even if that means being held in contempt of court and imprisoned, and this in turn runs the risk of allowing the anonymous source to discredit people or organisations with little if any accountability.

The anonymity, or secrecy to put it more plainly, is at the core of the problems arising from the journalist-source relationship, just as it is for governments, police and intelligence agencies. In each case there are valid reasons for discussions to be had or documents circulated or actions taken to be done behind closed doors, but in that closed room there is scope for abuse. In reality, journalists routinely grant anonymity to a range of sources far wider than whistleblowers. The anonymous source may also provide what is referred to as 'managed government leaks', that is, a disguised media release that is 'dropped' in the lap of selected journalists. As the American political journalist James Reston once observed: 'The ship of state is the only known vessel to leak from the top.'

Sometimes, the politician leaking information to a journalist is the very same politician trenchantly demanding an inquiry into the leaking of other information to journalists. The dubious use of sources finds its nadir in coverage of celebrities. Mark Singer, in a short book reprinting and updating a profile he wrote about Donald Trump in 1997, draws attention to the bizarre habit of New York's then best-known property developer routinely telling him that what he is about to say is 'off the record but you can use it', which Singer uses to devastating effect later in the profile:

Trump, by the way, is a skilled golfer. A source extremely close to him – by which I mean off the record but I can use it – told me that Claude Harmon, a former winner of the Masters tournament and for thirty-three years the club pro at Winged Foot, in Mamaroneck, New York, once described Donald as ‘the best weekend player’ he’d ever seen. (Singer 2016, 65)

The idea of going to prison to protect Donald Trump’s vanity about his golf score exposes the ridiculousness of journalists granting anonymity without first thinking about it. A review of the journalists’ code of ethics in Australia in 1997 recommended inserting the words ‘in good faith’ into the clause about respecting confidences precisely because of the damage that can be wreaked by sources operating in bad faith (MEAA 1997, 55–73). The recommendation was not accepted.

There is a range of issues, then, that arise in this area of journalism practice that include but are not limited to:

1. How do journalists verify the information they receive from whistleblowers and other anonymous sources?
2. How do they ascertain whether they have sufficient understanding of context surrounding the information divulged to ensure they are not being misled?
3. Are the source’s motives for divulging information important for the journalist to understand?
4. To what extent can journalists discuss or disclose material about their anonymous sources to their audience?

## **Case Studies**

### ***Case one: Deep Throat***

It is easier to see these abstract issues at work through discussion of particular case studies, and there is probably no better place to begin than with a reconsideration of the most famous anonymous source in media history: Deep Throat. There are two reasons for this: first, the mystique surrounding the source, and, second, because archival information recently made available casts new light on the source’s behaviour. Deep Throat was the invaluable anonymous source who provided information to Bob Woodward in 1972 and 1973 about the break-in of the Democratic Party’s National Committee headquarters at the Watergate Hotel complex by five men carrying equipment to copy documents and plant electronic listening devices. The reporting by Woodward and his colleague, Carl Bernstein, for the *Washington Post* led the

way in revealing how the break-in was not a 'third-rate burglary', but part of a long-running campaign of political dirty tricks that was covered up by President Richard Nixon. Facing impeachment, Nixon was forced to resign in 1974, becoming the first president to do so in American history. Woodward and Bernstein were energetic, diligent journalists who followed up many leads and interviewed many people, but Deep Throat was a highly placed source who provided or confirmed crucial information and who suggested fruitful lines of inquiry, epitomised in his phrase 'follow the money'.

The importance of the story, the role played by the journalists in eventually forcing Nixon to resign and the three-decades-long secrecy surrounding Deep Throat's identity have all served to reinforce the value and importance of anonymous sources in journalism. Add to this the book written by Bernstein and Woodward, *All the President's Men*, which was later adapted into a Hollywood film that starred Robert Redford and Dustin Hoffman and featured clandestine meetings in underground car parks between Redford and Deep Throat, played by a trench-coated, nervously smoking Hal Holbrook. A mythology has grown up around Watergate that is grounded in reality but heightened to glamorous effect: the phrase 'follow the money', for instance, is uttered in the film but it is not in the book or in Woodward's contemporaneous notes (Holland 2012, 86, 172). So pervasive is the Watergate mythology that it jolts those coming to the story today that Deep Throat was never mentioned in the original newspaper reports and that the name derived from an office joke. It was a play on the words 'deep background' and referred to an infamous pornographic film showing at the time entitled *Deep Throat* whose promotional line was 'How far does a girl have to go to untangle her tingle?' (Bernstein and Woodward 1974, 71). After Mark Felt, with the help of his family, revealed himself as Deep Throat in 2005, and the University of Texas bought the two journalists' Watergate primary source materials for an astonishing US\$5 million, researchers have been digging into them, most notably Max Holland, whose 2012 book *Leak: Why Mark Felt Became Deep Throat* makes a convincing argument that Felt's leaking was not the act of a patriotic public servant blowing the whistle on a corrupt presidency, but of a ruthlessly ambitious careerist.

It is often forgotten that on 2 May 1972, a matter of weeks before the Watergate burglary, J. Edgar Hoover died. The Federal Bureau of Investigation's director for a prodigious 48 years, Hoover's decline and eventual death set off an almighty internal struggle for succession. As deputy director, Felt believed the job should have been his and was aggrieved when Nixon appointed L. Patrick Gray over him. Holland argues that Felt leaked to Woodward not because he was concerned about the political dirty tricks that Nixon's supporters had engaged in or about the White House's cover-up, but

to undermine Gray's leadership so that he would be sacked and replaced by Felt. As much as anything, Holland argues, Felt's motive can be gleaned from how, to serve his purposes, he sometimes leaked misinformation to Woodward and at other times refused to divulge the kind of information about the White House that would have prompted other people possessing such information to become whistleblowers. To cite one instance among many discussed in *Leak*, Felt suggested to Woodward that the White House was only putting forward Gray's name to the Senate for the FBI director role because Gray had blackmailed the president. As Holland writes:

No piece of information Felt ever shared with Woodward was so blatantly untrue as the claim that Gray had blackmailed the president into nominating him. It did not appear contemporaneously in *The Washington Post* – the allegation was first levelled in *All the President's Men* – but it was and remains a wonderful demonstration of Felt's true, and very personal, agenda. (Holland 2012, 128)

Woodward was an extremely tenacious journalist but he was also inexperienced – he had been a journalist for less than two years when Watergate broke (Havill 1993, 57–69) – and vulnerable to being manipulated by Felt, as Woodward himself recalled in his 2005 memoir about Felt, *The Secret Man* (17–21, 110–11). It comes as a surprise then, given the lengths to which Woodward went to protect his famous source, as outlined in *All the President's Men*, to learn from *Leak* that Felt provided background information to other journalists covering Watergate, notably Sandy Smith from *Time*, who had written about the FBI for years (Holland 2012, 31–36).

What emerges from a reading of Holland's carefully researched work – the endnotes and sources occupy a quarter of his book – is how much more complicated is the story of how journalism and politics actually operates behind closed doors than is presented in most accounts of this celebrated episode in media history. As Holland comments:

The more time I spent catching up with the Watergate literature, the more fascinated I became with the journalistic angle to the story. It became apparent that the press had not applied any of its well-honed scepticism to the pat story about Deep Throat. The coverage of W. Mark Felt's death in 2008 underscored my sense that the treatment had been self-congratulatory, if not self-adulatory, rather than thoughtful (Holland 2012, Acknowledgements, 198).

It is important to note that Holland does not argue that the core of the two journalists' Watergate stories was wrong; however selective or misleading Felt's information was, it did not push them off-course from what became

their focus – the flaws of the Nixon presidency. He does argue, however, that their reporting was less important than they were given credit for. There is continuing debate about that, but here, at least in part, Woodward and Bernstein were hoist by their own petard, as it was they who transformed their low-profile dogged newspaper reporting into a book that, as the original dust jacket rightly proclaims, was ‘the most devastating political detective story of the century’. And it was a detective story told through their eyes. There is nothing intrinsically wrong with that, but the mythologising of their work in the Hollywood film of the same name has had negative as well as positive consequences.

### ***Case two: Plamegate***

Woodward features in my next case study, though this time as a peripheral, shadowy figure. A benefit of Woodward and Bernstein’s decision to tell the story of their Watergate reporting in *All the President’s Men* is that along the way they reflect on what they did and are honest enough to show themselves in an unflattering light on occasion. The pair collaborated on their next book, *The Final Days* (1976), about the downfall of Nixon’s presidency, but since then have gone their separate ways. As the author or co-author of a further 17 books, Woodward has become perhaps the most famous print journalist in the world – a ‘human brand’ as one of his biographers puts it (Shepard 2007, 227). His books, most of them about American politics, contain revelations that drive the news cycle on their release and become national bestsellers. He is also no longer a young general reporter; he is now a veteran Washington insider.

Few have ever questioned Woodward’s work ethic or his persistence, but for decades now he has been immersed in the closeted world where journalists barter their independence to gain access to accounts of high-level meetings and classified documents. It is in this context that Woodward appears briefly but significantly in a case of particularly nasty leaking.

The case is explored in *Off the Record: The Press, the Government and the War over Anonymous Sources*, Norman Pearlstine’s account of his bruising, dispiriting experience during what became known as Plamegate. (The suffix has its origins in the name Watergate.) It was later dramatised in the 2010 film, *Fair Game*, starring Naomi Watts and Sean Penn.

Pearlstine, during his period as head of Time Inc., became caught up in this complicated inside-the-Beltway scandal, which began in mid-2003 when an official in the Bush administration anonymously revealed to selected journalists that Valerie Plame was a covert CIA agent. The leak appeared to have been payback for an opinion page article by Plame’s husband, Joe Wilson,

which argued that the administration had deliberately misled the world in the lead-up to the invasion of Iraq in March 2003 by alleging, against the evidence, that Saddam Hussein's regime had sought to buy high-grade uranium from Niger. President George W. Bush appointed a special prosecutor, Patrick Fitzgerald, to investigate the leak, which eventually led to the conviction of Lewis 'Scooter' Libby, vice president Dick Cheney's chief of staff, for perjury.

Along the way, the inquiry turned into a brawl between the courts and news organisations that refused to reveal the identity of their journalists' sources for stories about Plame and Wilson. Pearlstine became involved because a political journalist with *Time* magazine, Matt Cooper, was one of the journalists who wrote about Plame and Wilson. Initially, Time Inc. refused to comply with the special prosecutor's request to reveal sources, but after the Supreme Court upheld a District Court order, Pearlstine directed Cooper to comply, which earned Pearlstine the ire of many in the news media for whom protection of confidential sources is sacrosanct regardless of the source's identity or purpose in leaking material.

Reflecting on the issue, Pearlstine writes: 'The more I learned about the use of confidential sources, the more I came to understand how their *misuse* was undermining the press's credibility' (Pearlstine 2007, xiii).

It was not only Pearlstine's journalists who became embroiled in the case. In 2002 and 2003, Judith Miller of the *New York Times* cited anonymous sources to support the claims that Saddam had weapons of mass destruction. Miller was another journalist caught up in Patrick Fitzgerald's leak investigation because she had also been told by Scooter Libby about Valerie Plame's identity as a CIA agent. So, too, was Woodward because he had been the first journalist to be told about Plame's identity (Pearlstine 2007, xviii), but had decided against writing the story, not because it fell short of being news but because 'I hunkered down. I'm in the habit of keeping secrets. I didn't want anything out there that was going to get me subpoenaed', as he later wrote in an apology for the *Washington Post* (Pearlstine 2007, 185).

Woodward had kept this secret while he was researching and writing his book about the invasion of Iraq, *Plan of Attack* (2004), perhaps because it was less important than the story of the actual war but perhaps also because he was less concerned with criticising how the war was unfolding than with documenting how long Bush and his most senior advisers had been planning it.

Woodward's actions illustrate the perils for journalists of juggling the need for access to information with their commitment to editorial independence. The tension is inflected by Woodward's dual roles as an author and as an associate editor of a daily newspaper. Miller, meanwhile, was sent to prison in 2005 for refusing a court order to divulge the source of her leaked information. She spent more than 11 weeks in prison before her source, Libby, waived

her agreement to maintain his confidentiality. Soon after Libby was indicted for perjury, in October 2005, Miller left the *New York Times*; she later took on a role with the Fox News cable television network (*The Huffington Post* 2008).

So on one hand we have the story of a resolute journalist going to prison rather than give up her source, and on the other hand we have a tale of grubby political dirty tricks. As Timothy Garton Ash writes in his 2016 book *Free Speech*:

What was Miller protecting? Answer: an underhand attempt, worthy of Richard Nixon, to discredit a public-spirited whistleblower by secretly leaking the fact that his [Wilson's] wife was a CIA operative, so as to shore up secret intelligence claims in support of a war that ended up damaging the United States' national security. (Garton Ash 2016, 345)

And, it should be added, a war that cost thousands of American soldiers' lives and hundreds of thousands of Iraqi lives.

### ***Case three: Andrew Wilkie***

Where Valerie Plame's professional life was damaged because of leaks about her husband's dissenting views (Wilson 2007), in Australia an intelligence analyst who questioned the grounds on which Australia followed the United States' lead in invading Iraq was also the target of leaks. Andrew Wilkie was a career army officer and then an intelligence analyst in the Office of National Assessments (ONA). In the lead-up to the Iraq War, he became increasingly concerned that the case for invasion was being presented misleadingly to the Australian public, and that intelligence assessments coming from the United States to Australia placed other priorities above Saddam's stockpiling weapons of mass destruction or his links with al-Qaeda. The US government was actually more concerned about controlling oil reserves, influencing the future configuration of the Middle East and reinforcing its ascendancy as a global power (Wilkie 2004, 63–67).

Wilkie resigned his post on 11 March 2003, just nine days before the invasion went ahead. He voiced his qualms publicly, earning himself the ire of the then federal Liberal-National Party coalition government. On 19 June 2003, Wilkie appeared before a parliamentary committee of inquiry in the United Kingdom; by this time, three months after the invasion and a month after President Bush had triumphantly declared 'Mission Accomplished', no weapons of mass destruction had been found (Rich 2006, 267–274). Wilkie's criticisms severely embarrassed the Australian government. The following day, staff in the office of the Australian foreign minister, Alexander Downer, requested an additional copy of the one report about Iraq that Wilkie had (co-)written when he was at ONA, and two days later the prominent News

Limited columnist and fervent supporter of the war, Andrew Bolt, wrote a scathing article about Wilkie, quoting liberally from Wilkie's classified report (Wilkie 2004, 172–176).

The ONA referred the leak to the Australia Federal Police (AFP) who were unable to find the source of the leak. The AFP report, a heavily redacted version of which was only made public 12 years later after a freedom of information request from a Labor parliamentarian, Andrew Leigh, was generally bland, but did criticise Wilkie as a 'career Army officer' who failed to 'correctly secure' the report (AFP 2004). Wilkie, for his part, said it was an 'open secret' that the leaked copy of his report came from the foreign minister's office (Snow 2016).

The source of the leak to Bolt has not been proved definitively, but Wilkie's assertion is plausible and the leaked report was clearly put to political use by a sympathetic columnist at a time when the rationale for the war in Iraq was unravelling. Wilkie has fared better than other whistleblowers, many of whom pay a heavy price for speaking out (Garton Ash 2016, 340–341). Perhaps this was because he took control of his own destiny by resigning from the job that had given rise to his original concerns. Despite criticism by the coalition government and its media supporters, Wilkie's stance was soon vindicated by events as the war in Iraq became disastrous. He has forged a second career, as an independent federal parliamentarian (since 2010) that was born out of an initial alliance with the Greens, the political party that had most strongly opposed the war in Iraq.

#### ***Case four: Kathy Jackson***

By the time Wilkie was elected to federal parliament in 2010, another whistleblower had come to national prominence; but where Wilkie focused on misuse of intelligence assessments, Kathy Jackson was concerned about corruption in trade unions. Over time, through various official inquiries and court cases as well as good work by investigative journalists, the broad public and media perception of Kathy Jackson shifted inexorably from public-spirited whistleblower to poisonous leaker. The career of this one-time national secretary of the Health Services Union (HSU) has spiralled downward, though not primarily out of retribution by employers or government. Rather, Jackson has brought about her own demise in a spectacularly public way that has elements of Shakespearean tragedy and dollops of the Kardashians. Alongside her partner, Michael Lawler, a disgraced former commissioner of the industrial relations umpire, the Fair Work Commission, she made a disastrous appearance on the Australian Broadcasting Corporation's television investigative programme *Four Corners* in 2015. In that programme, the pair unwittingly

presented themselves as a reincarnation of communist Romania's late and unlamented first couple, Nicolae and Elena Ceaușescu (Meldrum-Hanna 2015). What the Kathy Jackson story illuminates is the difficulty for journalists in disentangling revelatory information from its broader context, and of the importance of understanding – and taking into account – the motivation of a source for divulging secret information.

Jackson joined the HSU as a research officer in 1992 straight after finishing her university teaching degree. Power in the union sat with the state branches rather than the federal secretariat (Norington 2016, 30). Michael Williamson ran the most powerful state branch in New South Wales, while Jackson was secretary of the smaller number three branch in Victoria. Craig Thomson was appointed national secretary in 2002. The first inkling of corruption in the union came not from Jackson, but from an article written by experienced industrial and political journalist, Mark Davis, and published in the *Sydney Morning Herald* in 2009. It alleged Thomson had been misusing his union-supplied credit card by spending on personal goods and services, including escort services with shabbily exotic names like Tiffany's and Miss Behaving. Thomson sued the newspaper. As the legal action progressed, Jackson catapulted herself on to the national stage in 2011 by announcing that Thomson's behaviour paled alongside that of Williamson. She called for a royal commission into the union, which then-Labor prime minister, Julia Gillard, rejected, mainly because since 2007 Thomson had been a Labor parliamentarian and she desperately needed his vote to keep afloat what was already a minority government. Jackson's call was welcomed by the then leader of the opposition, Tony Abbott, and she was portrayed in the media as a Joan of Arc figure, especially by Sydney radio shock jocks Michael Smith, Alan Jones and, for a while, Ray Hadley. Certainly, this was how she presented herself.

Wrapping herself in the mantle of whistleblower, Jackson told several journalists she was the source for Mark Davis's article, which had included documentation such as Thomson's credit card statements. She claimed she had instigated an external audit of Thomson's spending, but she hadn't; the union's executive had. As a member of the executive, Jackson had supported rather than initiated the motion for the audit, but later she and Williamson tried to have the audit stopped.

A book released in 2016 about Jackson, from which the account in this section primarily draws, disputes her claim to be Davis's source. In *Planet Jackson*, Brad Norington, also an experienced industrial journalist with both the *Sydney Morning Herald* and the *Australian*, writes that he knows who Davis's source was and it wasn't Jackson (Norington 2016, 10, 59). He does not name the source, and neither does Davis, but Davis was a thorough journalist and had

verified and corroborated the original leaked information with other sources. In any case, the discovery process in the defamation action against the *Sydney Morning Herald* not only served to verify Davis's reporting, but sank Thomson's credibility. This forced Gillard to abandon him to the cross-benches, which weakened her government's tenuous hold on power.

When Abbott became prime minister in 2013, he quickly instigated a Royal Commission into various trade unions, including the HSU. There were clearly issues of governance and even corruption in some unions that merited investigation, but the appointing of a royal commission was also seen as an overreaction by a pugnacious prime minister determined to crush his party's historic enemies and to continue pursuing an ancient scandal involving Gillard's alleged misbehaviour as a union-aligned lawyer.

Jackson the whistleblower was the commission's star witness, but, not surprisingly, by this time Jackson's enemies in the HSU had felt the need to retaliate. As it happens, Jackson had left a trail to a stockpile of ammunition that showed she was part of the problem rather than part of the solution.

The royal commission was slow to accept this characterisation, according to Norington (2016, 174–197), but gradually the sheer weight of Jackson's own flagrant misuse of her union credit card and the union's National Health Development Account (NHDA) changed their minds, not to mention that of the public. The amount Thomson was originally accused of stealing – nearly \$500,000 – was much more than what was finally agreed on by prosecutors and the defence in his case – \$25,538 – but it was still a much smaller amount than that which the Federal Court found in 2015 that Jackson had misappropriated: \$1.4 million. In 2016 she was charged with 70 counts of obtaining property by deception and other fraud related offences (Schneiders et al. 2016).

Norington lays out Jackson's fraud in eye-watering detail, the extent to which Jackson used the money of her union members, who are among the lowest paid in the community, on a vast range of goods and services, at luxury boutiques or department stores, in Australia or on overseas trips where the line between work and holiday was fatally blurred.

Given how deeply implicated she was in the HSU's corruption, it is not at all clear how Jackson thought that she could blow the whistle without blowing herself up in the process. Norington suggests she had planned to take control of the whole union and so prevent release of incriminating information. She also appears to have been as erratic as she was entitled. Whether journalists failed to perceive this over the years or whether they simply swallowed the leaks for the sake of a good story is unclear. Whichever it is, not all journalists were swept up in Jackson's psycho-drama. Mark Davis's initial story about Thomson's credit card misuse was proved to be accurate and important, and

did not rely on Jackson. Brad Norington has diligently documented the whole sorry saga, and his book shows how Jackson transmogrified from seemingly altruistic whistleblower to self-serving and ultimately self-destructive wrecking ball. The Taliban was the nickname given to the HSU number three branch under Jackson because they ‘like to blow up things and see what happens later’ (Norington 2016, 84). In the end it seemed an apt description of her *modus operandi*.

### **Discussion**

The myriad of problems created in dealing with sources who are manipulative or venal or misguided or unstable have long been present in journalism, as the case studies discussed in this chapter show. In all likelihood, they will be with us for a long time to come, but the trend toward massive data leaks of recent years solves at least some of these problems because as Bastian Obermayer and Frederick Obermaier, the two journalists who initiated the Panama Papers story, write: ‘The advantage with data is that it’s not self-important or verbose. It doesn’t have a mission and it isn’t looking to deceive you’ (Obermayer and Obermaier 2016, 2). Leaving aside the motive of the person who leaked the data, this is true, especially when journalists are given many documents rather than a few carefully chosen to make the leaker’s case.

Document dumps are also more likely to provide journalists with enough context so they will be able understand their meaning, and avoid being misled. These virtues of the document dump were what Julian Assange was pointing to when he described WikiLeaks’ goal as doing ‘scientific journalism’ that would give readers sufficient information to be able to assess for themselves any claims made in a story written from leaked documents (WikiLeaks discussion forum 2011). It is nearly impossible, though, to entirely remove the human element from interactions between journalists and their sources. Assange himself has been criticised for allowing his own views to cloud the extent to which WikiLeaks redacted intelligence documents to avoid endangering the lives of agencies’ human informants (Leigh and Harding 2011, 176–193; Cole 2014). Assange has criticised, with some justification, how mainstream news media outlets handled documents made available by WikiLeaks, but the picture of Assange that emerges from a brilliantly perceptive 26,000 word essay written by his former ghostwriter, the novelist Andrew O’Hagan, reveals Assange as a dangerously slippery source for journalists (O’Hagan 2014).

In any case, the anonymous source for the Panama Papers, known only as John Doe, released to Obermayer and Obermaier a six-page statement entitled ‘The revolution will be digitised’, which explained his/her actions

(Obermayer and Obermaier 2016, 339–344). It opens with a clear assertion – ‘[i]ncome inequality is one of the defining issues of our time’ – and in lucid prose outlines the role of Mossack Fonseca in perpetuating the problem of income inequality, the failure of society’s institutions (government, banks and their regulators, tax offices, the judiciary and the media) to deal with it and ends with a ringing challenge for them all to take action. It seems John Doe does not work for any government or intelligence agency; he/she leaked the documents ‘simply because I understood enough about their contents to realise the scale of the injustices they described’ (2016, 340). John Doe is willing to cooperate with authorities but worries about reprisals, pointing to the case of Bradley Birkenfeld who ‘was awarded millions for his information concerning Swiss bank UBS – and was still given a prison sentence by the Justice Department’ (2016, 341). A thread running through Obermayer and Obermaier’s book is a dialogue they have with John Doe, beginning with their initial feeling out of each other, about the scope of the documents, their meaning, the potential deadly consequences for John Doe should their identity become public, the time it is all taking for the journalists to make sense of the documents and an endearing author-like excitement as the date for their publication approaches.

The effect of these attempts at transparency is to strengthen readers’ ability to assess for themselves the whistleblower’s motivation and, by extension, the veracity of the documents. Importantly, both ‘John Doe’ and Edward Snowden deliberately sought out journalists to take on the role of verifying the documents, assessing their newsworthiness, setting them in context and communicating with the broadest possible audience. These actions, and their willingness for them to be made public, strengthen their claims to be public-spirited whistleblowers rather than game-playing leakers. It is hard to envisage Scooter Libby going through the same steps.

## **Conclusion**

What we can draw from these various case studies is that, first, the capacity of digital technologies to enable massive document releases is overall a boon for journalism and the free flow of information in society. The technology erases many but not all problems with the journalist-source relationship. As with other aspects of journalism, transparency between journalist and audience about what is being disclosed, how and in what circumstances enhances the whole process. The tension between secrecy and openness applies to journalists and journalism, as it does to governments and intelligence agencies. The anonymity granted to both whistleblowers and leakers masks a myriad of sins. In the case of Woodward and Bernstein’s reporting about Watergate, we can see

how their desire to tell the story behind *All the President's Men*, especially the role played by their most important anonymous source Deep Throat, has both cemented the value of anonymous sources and cheapened it by wrapping the source in a one-dimensional characterisation – the noble whistleblower – that we now know is at odds with the evidence. Given journalism's declared commitment to truth-telling, this is a serious problem, and one that plays out in different ways in the case studies about Valerie Plame, Judith Miller, Andrew Wilkie and Kathy Jackson. There the short-sightedness of viewing whistleblowers through a narrow lens is exposed to harsh light. Not only do people seek to divulge information anonymously for self-serving as well as civic-minded reasons, but because journalism scrutinising those in positions of power and authority necessarily operates in contested terrain, the stakes are high, people's motivations are mixed and their methods murky. Journalists can and do need to pick their way through these minefields, but their cause is helped not a whit either by spinning fairy tales about their sources or shrouding their work in absolute secrecy.

A well-functioning and far-reaching access to information system, as manifest by Freedom of Information (FOI) laws, can be a potent journalistic tool in assessing if a source is telling the truth or not. Provided the freedom of information system works in practice. As we shall see in Chapter 6, the differences between the Five Eyes courtiers in this regard are significant.

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