

## Australia: The Heroism of David McBride. John Kiriakou

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*By 2014 McBride had compiled a dossier into profound command failings that saw examples of potential war crimes in Afghanistan overlooked and other soldiers wrongly accused. On Tuesday he was sentenced to nearly six years in jail.*

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*Sometimes a whistleblower does everything right. He or she makes a revelation that is clearly in the public interest. The revelation is clearly a violation of the law. And then he or she is even more clearly abused by the government. It would be great if these stories always had happy endings. Unfortunately, they don't.*

In this case, the whistleblower, the hero, Australian **David McBride** has been sentenced to [five years and eight months in prison](#) for telling the truth. He will not be eligible for parole for 27 months.

David McBride is [former British Army officer](#) and a lawyer with the Australian Special Forces who blew the whistle on war crimes committed by Australian soldiers in Afghanistan, specifically the killing of 39 unarmed Afghan prisoners, farmers, and civilians in 2012.

After failing to raise a response through official channels, McBride shared the information with the Australian Broadcasting Corporation (ABC), which published a series of major reports based on the material.

The ABC broadcasts in 2017 led to a major inquiry that upheld many of the allegations.

Despite this, the ABC and its journalists themselves came under threat of prosecution for their work on the story.

The ABC offices in Sydney were raided by the national police, but in the end the government did not prosecute an ABC journalist because it was not in the public interest. McBride himself, however, was prosecuted for dissemination of official information.

## Two Tours in Afghanistan

Let's go back a few years. McBride at the time already was a seasoned attorney. After studying for a second law degree at Oxford University, he joined the British military and eventually moved back to Australia where he became a lawyer in the Australian Defence Forces (ADF). In that role he had two tours in Afghanistan in 2011 and 2013.

While on deployment, McBride became critical of the terms of engagement and other regulations that soldiers were working under, which he felt were endangering military personnel for the sake of political imperatives determined elsewhere.

By 2014 McBride had compiled a dossier into profound command failings that saw examples of potential war crimes in Afghanistan overlooked and other soldiers wrongly accused. His internal complaints were suppressed and ignored.



An Australian platoon on a foot patrol in a town in Uruzgan, Afghanistan, Aug. 16, 2008. (ISAF, John Collins, U.S. Navy)

McBride's reports also looked at other matters, including the military's handling of sexual abuse allegations. After his use of internal channels had proven ineffective, McBride gave his report to the police. And eventually, he contacted journalists at ABC.

ABC's [Afghan Files](#) documented several incidents of Australian soldiers killing unarmed civilians, including children, and questioned the prevalent "warrior culture" in the special forces. Subsequent to McBride's disclosures, the behavior of other Coalition Special Forces in Afghanistan also came under sustained investigation.

In many ways, McBride's reports went further than the issues identified by ABC. Amid prevalent rumors that Australian troops were responsible for war crimes, questionable deaths in Afghanistan had led to calls for investigations.

## Report Vindicated McBride & ABC

In November 2020, the [Brereton report](#) (formally called the Inspector General of the Australian Defence Force Afghan Inquiry report) was published, utterly vindicating McBride and the ABC. Judge Paul Brereton found evidence of multiple incidents involving Australian personnel that had led to 39 deaths. Among his recommendations were the investigation of these incidents for possible future criminal charges.

There would be almost no criminal charges, however. At least, there would be only one eventual criminal charge against one single soldier in the murder of Afghan civilians. There have been no charges against the officers who covered up the war crimes.

Instead, though, there would be serious charges against McBride for "theft of government property" (the information) and for "sharing with members of the press documents classified as secret." He faced life in prison.



Main offices of the Australian Department of Defence in Canberra. (Nick Dowling, Wikimedia Commons, CC BY-SA 3.0)

McBride's sentence illustrates the challenges that Australian whistleblowers face when reporting evidence of waste, fraud, abuse, illegality, or threats to the public health or public safety.

First, just like in the United States, there are no protections for national security

whistleblowers. McBride took his career — indeed, his life — into his hands when he decided to go public with his revelations. But what else could he do?

Second, as in the United States, there is no affirmative defense. McBride, like Edward Snowden, Jeffrey Sterling, Daniel Hale and like me, was forbidden from standing up in court and saying, “Yes, I gave the information to the media because I witnessed a war crime or a crime against humanity. What I did was in the public interest.”

Those words are never permitted to be spoken in a court in the United States or Australia.

## Recalling Nuremberg



Defendants at Nuremberg guarded by American Military Police, November 1945. (Raymond D’Addario, Wikimedia Commons, Public domain)

Third, Australia is in dire need of some legal reforms. The judge in McBride’s case [said at sentencing](#) that McBride, “had no duty as an army officer beyond following orders.” That defense was attempted at Nuremberg and it failed. It’s time for the Australian judiciary to get into the 21st century.

There are a couple points of light in this whole fiasco. The Brereton Commission did indeed recommend that 19 members of the Australian Special Forces be prosecuted for war crimes. So far, one has been charged with a crime. He is accused of shooting and killing a civilian in a wheat field in Uruzgan Province in 2012.

And McBride will be allowed to appeal his conviction. Still any other light at the end of the tunnel is likely an oncoming train, rather than relief for the whistleblower.

But the bottom line is this: There is a war against whistleblowers in Australia just like there is in the United States.

Indeed, **Andrew Wilkie**, a former Australian government intelligence analyst-turned-whistleblower, and now member of Parliament, says that “the Australian government hates whistleblowers” and that it wanted to punish David McBride and to send a signal to other government insiders to remain silent, even in the face of witnessing horrible crimes. I would say exactly the same thing about the United States.

I’m proud to call David McBride a friend. I know exactly what he’s going through right now. But his sacrifice will not be in vain. History will smile on him. Yes, the next several years will be tough. He’ll be a prisoner. He’ll be separated from his family. And when he gets out of prison, well into his 60s, he’ll have to begin rebuilding his life. But he is right and his government is wrong. And future generations will understand and appreciate what he did for them.

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*Featured image: David McBride outside the Supreme Court in Canberra in November 2023. (Cathy Vogan/Consortium News)*

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