

If moral courage matters, this whistleblower needs defending

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<https://www.smh.com.au/national/if-moral-courage-matters-this-whistleblower-needs-defending-20201116-p56ey4.html>

Dear General Campbell, we've met a few times. At briefings at Parliament House when you ran Operation Sovereign Borders, and in the robust forum of Senate estimates. I was always impressed by your palpable decency, competence and forthright manner.

So, I hope you won't take issue with me writing this open letter to you about our firm's client, David McBride, a proud veteran, a former army major who now faces life imprisonment for, basically, telling the truth about what was happening in Afghanistan.

Just a few days ago, you were handed the Brereton report – four years in the making – about alleged war crimes by Australian troops in Afghanistan.

You said, on receiving the report, you would "speak out" about Justice Brereton's key findings once you had "read and reflected" on the report. Not only do we now know you will do so this Thursday, but the PM has warned Australians to brace themselves over the shattering revelations in that report.

Given our client was warning – years before – of the very culture of cover-ups that the Brereton inquiry investigated, I urge you to read and reflect on what is happening to McBride before you speak out, because the two are inextricably linked.

Major David McBride was an army lawyer, with an exemplary record who served in Afghanistan on two tours of duty. McBride became deeply concerned about battlefield behaviours that were being ignored or not reported. He was particularly concerned by the culture of impunity and cover-up that was being set by defence leadership.

As both an army officer, sworn to uphold the integrity of the Defence Force, and a practising lawyer, McBride had a duty to report what he observed. He did so by lodging complaints up the chain of command and through every possible avenue of internal disclosure. He was ignored.

As a last resort, because the information demanded disclosure, he finally "blew the whistle" by going to the media. The ABC published the "Afghan Files" in July 2017, setting out shocking details of war crimes and cover-ups – from material that McBride provided. The "Afghan Files" were a breakthrough revelation for Australians, including many of its parliamentarians (including me at the time), but for McBride it was the beginning of his torment. He was arrested soon after and now faces a possible life sentence at his trial next year.

The charges against ABC journalist Dan Oakes, who received the documents, were recently (and quite rightly) dropped by the Commonwealth Director of Public Prosecutions. But without the source, the journalist had no story and the public would still be none the wiser.

So, what's this got to do with you? Both nothing and everything. Nothing, as there is no suggestion of any culpability on your part; on the contrary, it was you, as Chief of the Army in 2015, who commissioned the report by Samantha Cromptoets that was seen as a catalyst for the Brereton inquiry. Cromptoets' cataloguing of the "blood lust" and "cover-ups of unlawful killing" only saw the light of day on the pages of this newspaper last month.

Secrets of War

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But in a sense, the continuing prosecution of McBride has everything to do with you. McBride was arrested by the AFP in 2017 at the instigation of Defence. Now in 2020, the Commander of Special Operations, Major-General Adam Findlay, acknowledges that “poor moral leadership” was to blame for atrocities that occurred in Afghanistan. What a difference three years has made. But nothing has changed for McBride.

Findlay praises the “moral courage” of whistleblowers and I suspect there may be more such comments in the wake of the Brereton report. Yet the parallel treatment of McBride remains a chilling warning to every serving ADF member to turn a blind eye, to shut up if they know what is good for them.

It was whistleblowers like McBride and a handful of others who made the Brereton report possible by refusing to be intimidated into silence. In my view, they have redeemed the reputation of our nation. They do not deserve jail cells. I respectfully ask you, indeed I implore you, when speaking out on the Brereton report this Thursday, that you also speak out for McBride: a man who acted at great personal sacrifice to uphold the honour and integrity of the Defence Force you lead.

Nick Xenophon is a partner in law firm Xenophon Davis, which is acting for David McBride. As a senator (2008 to 2017) he instigated a Senate inquiry into whistleblower protections.