

# Leaks, sources and passing the salt

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Journalists need to think more carefully about their relationships with their sources, writes *Matthew Ricketson*

Right:

"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," writes Norman Pearlstine in his account of the media coverage of the White House's attack on Valerie Plame (above).

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THERE'S a famous gag in the American sitcom *Frasier* where the world's most neurotic psychiatrist, Niles Crane, recalls one of his patients' "rather amusing Freudian slip." Dining with his wife, the patient meant to say "Pass the salt," but actually said, "You've ruined my life, you blood-sucking shrew."

This scene came to mind while I was watching the recent ghastly demise of Victoria's police commissioner Simon Overland, which was nominally prompted by an ombudsman's report critical of Overland's mishandling of crime statistics but at least partly driven by a blizzard of damaging media leaks against him. As Margaret Simons astutely noted in *Crikey* on 16 June, the day Overland's resignation was announced by the Victorian government, "One person's brave whistleblower is another's dubiously motivated criminal leaker."

Exactly. Butting the husband's humdrum pleasantries up against his homicidal impulse is what makes the line in *Frasier* funny. Without that, it's more likely a prelude to domestic violence. Likewise, if you look at the Overland case through one prism you see a shining example of the public value of whistleblowing; but from another angle all you can see is a mess of feral office politics, government indecisiveness and media machination.

How do we disentangle the various strands? My interest here is in the way leaks and anonymous sourcing operate rather than what's wrong with policing in Victoria, which is clearly important but outside my area of expertise.

In her [16 June article](#), and in a subscriber-only piece for *Crikey* the following day, Simons began the process of setting out the complicated web of relationships and agendas – within the police force, between the force and governments past and present, and between police, politicians and journalists – that lies beneath the rare and disturbing event of the resignation of a state's most senior law enforcement officer. At the heart of the affair are two specific cases in which information was revealed without authorisation. One was treated as a “public interest disclosure,” the other as a “leak.”

On page seven of the [report](#) that precipitated Overland's demise, the Victorian ombudsman, George Brouwer, writes: “In late February 2011 I received a complaint from a whistleblower that Victoria Police crime statistics released by Deputy Commissioner Kieran Walshe on 28 October 2010 had been manipulated for political purposes and the data was misleading.” The whistleblower provided supporting documents that Brouwer determined constituted a “public interest disclosure” under the *Whistleblowers Protection Act 2001*, and the ombudsman began investigating.

Brouwer found that the quarterly crime statistics report had been released before the usual date under pressure from the previous Labor government. A media release accompanying the statistics said that assaults in Melbourne had fallen significantly, by 27.5 per cent, but in fact the incomplete data was not robust enough to support that claim. The favourable statistics were used prominently by the Labor police minister, James Merlino, in a debate about law and order on radio station 3AW with the man who was to replace him as police minister after the election, Peter Ryan.

On page fifteen of the report Brouwer refers to a Victoria Police intelligence brief leaked to the Neil Mitchell program on 3AW, which made its contents known on 28 February 2011. The brief provided crime statistics showing that in Melbourne's central business district some categories of assault had increased in the past year, which undermined the media release issued before the state election. Brouwer regards these documents as a leak rather than a “public interest disclosure” even though they concerned the same topic – crime statistics – and had come to his attention nearly simultaneously.

The difference, in his eyes, was that the first set of documents had been provided to his office, and therefore attracted the protection of the Whistleblowers Act, whereas the second set had been leaked to the news media. (Complicating the picture is the fact that the Act doesn't define “whistleblower.”)

Just over a week later Brouwer informed the Office of Police Integrity, or OPI, about his investigation, only to be told that the OPI was already investigating the leaking of the intelligence brief. The ombudsman's deputy wrote to OPI director Michael Strong raising concerns about the OPI investigation proceeding at a time when the ombudsman was

“investigating the underlying and far more important issue of the falsification of crime statistics.”

On 17 March Strong agreed to put his investigation on hold until the ombudsman’s investigation was concluded. Again, it is not immediately clear why one investigation would be seen as more vital than the other. The ombudsman’s investigation preceded the OPI’s investigation, but other than that we are back in the murky world of what might be whistleblowing but could be infighting, or may well end up being both.

Brouwer was aware of the muddiness of the waters. “One only has to read the newspapers to see that it is a regular occurrence for confidential Victoria Police information to be leaked to the media,” he wrote. “Sometimes this may be for personal reasons including payback and for others it may be for altruistic reasons such as revealing the facts surrounding a police activity. Although I am not investigating the leaks of the intelligence brief, I am concerned about the culture and propensity for this to occur. In this case, the misleading use of the crime data may have motivated the leaks.”

Watching these events from the outside, they appear baffling. Here is a police commissioner who by all accounts played a key role in combating organised crime and dealing with the notorious “gangland wars” and police corruption in Victoria in recent years – vital tasks for a police force, you’d think.

Certainly, the ombudsman found Overland guilty of serious misjudgement, contributing to a perception that his office had become politicised. But if Overland had had the support of his minister he probably would have survived the findings. That he did not have the support of the police minister, Peter Ryan, or of the recently elected Liberal–National coalition government overall, is among the key elements in his demise.

That much was clear well before Overland resigned. We know this as a result of a veritable torrent of stories in the news media quoting anonymous sources who criticised Overland’s leadership style and the police force’s continued mismanagement of issues such as its crime statistics database, and who revealed an unauthorised briefing of a senior government adviser by the then deputy police commissioner, Sir Ken Jones.

Sir Ken repeatedly refused all offers to comment publicly after he had resigned from the force and had been ordered to leave immediately because Overland suspected he was leaking to the media. But his views about Overland’s leadership, and even his own emotional state, continued to be ventilated comprehensively in media coverage based on information from unnamed informants “close to Sir Ken.”

I am not suggesting Victoria Police is without significant problems or that public airing of them through the news media is necessarily bad. What bothers me is the extent to which the media moved from reporting events to influencing them, with little or no acknowledgement that it was doing so. Whether individual journalists became active players in events I don’t know for sure, but it does look that way.

Simons, who has been following these and related events, suggests that when the OPI eventually does release the report of its investigation into the police intelligence brief leak, probably in August, it “is likely to be very uncomfortable reading for a number of people, not least the state government and the media.” She questions the news media’s ability to deal fairly with a report “that is likely to be very bolshie indeed about the role of confidential sources, leaks and relationships of convenience between news media and the factions in the police force.”

The OPI report, then, is shaping as one of those rare moments when the underbelly of journalistic practice is exposed via an official investigation. It will be instructive to see how the result is reported.

The OPI is about to be replaced by a new anti-corruption body following widespread concerns that it has misused its wide-ranging, highly intrusive powers and failed to secure convictions in the most serious police corruption cases. This means that *its* flaws rather than the media’s will most likely be the focus of coverage.

It’s rare that journalists reflect in any depth on their role in the events they report on, and it’s rare that news organisations discuss in any detail with their audience how they cover events. There is little in the culture of journalism that encourages open discussion about the pitfalls as well as the benefits of dealing with sources. Only recently one of Australia’s most senior journalists, David Marr, [said](#) that journalists should never complain about leaks: “We live by leaks. They’re our lifeline.” He was joking, but the joke bespoke an attitude of welcoming the benefits of receiving leaks without counting any of the costs.

**T**HE relationship between journalists and their sources is simultaneously central to journalism and the subject of muddle, mythologising and plain misinformation. The careful cultivation, husbanding and protection of vital but vulnerable human sources of information was central to one of the landmark works of investigative journalism in Australian history, “The Moonlight State,” Chris Masters’s 1987 expose of corruption in Queensland for *Four Corners*.

For every one of Masters’ invaluable sources inside the police, though, there are probably a hundred occasions when a journalist is leaked information that ranges from useful but only part of the picture to gossip or outright lies. The trench-coated “Deep Throat” divulging secrets of state in an underground car park to Bob Woodward in the movie *All the President’s Men* has fanned the myth that this is how much of journalism is done.

A journalist’s source may be someone concerned about bastardisation at a military college – a matter of genuine public interest, and subject of a government investigation right now – but he or she may also be a politician seeking refuge in anonymity in order to pour into the journalist’s ear vitriol about a rival within their party – a matter of interest to the party and precious few others.

The source may also be what Lenore Taylor, a senior political journalist with the *Sydney*

*Morning Herald* appearing on the same program as David Marr, referred to as “managed government leaks” – a disguised media release that is “dropped” in the laps 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, indeed, 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. For a 500-word article about singer Britney Spears’s domestic troubles that ran in the American magazine *People* in late 2005, anonymous “friends” or “sources” were cited fifteen times, according to Norman Pearlstine, then editor-in-chief of Time Inc., owner of *People*.

It is, of course, part of the journalist’s job to gather information from a range of sources, and journalists develop bulldust-detecting skills, but it would be a rare journalist who hasn’t either been duped or used by a source with an axe to grind.

Journalists’ potential susceptibility to manipulation is magnified by the fact that they work outside the organisations they report on. It is commonly said among people working in organisations, whether the police, the military, the bureaucracy, churches or companies, that even well-informed journalists are a long way from knowing what actually happens inside these complex institutions. Journalists who doubt this might reflect on the accuracy of, let alone the insights offered by, reporting of the inner workings of their own organisations – and remember this concerns journalists reporting on their own industry rather than those about which they probably have no firsthand knowledge.

Reston’s comment is a rare one. Mostly, journalists do not talk publicly about the tradecraft of dealing with sources. Although this is a defensible position in individual cases, this reticence has hardened into a general silence on the issue. Dealing with sources can be ethically sticky, psychologically entangling *and* pretty much essential to doing the job.

Such a silence doesn’t help journalists, let alone their sources – not to mention the audience. The original code of ethics for the Australian Journalists Association, created in 1944, required a journalist “to respect all confidences received by him in the course of his calling.” Apart from the old-fashioned language, what is noteworthy is that the code had no more to say on the topic than those thirteen words.

The current code of ethics is a bit more expansive: “Aim to attribute information to its source. Where a source seeks anonymity, do not agree without first considering the source’s motives and any alternative attributable source. Where confidences are accepted, respect them in all circumstances.” While this is an improvement, it still understates the extent to which journalists every day and on all manner of stories grant sources anonymity. Without that, many sources won’t talk, and both they and the journalist know it.

As Jack Shafer, media columnist for *Slate*, has pointed out, “The surplus of journalists and the relative scarcity of knowledgeable sources allow the sources to pick the rules of

engagement. If a reporter insists that a source put the information on the record, the source can always say, ‘Screw you,’ and shop it to a publication that will agree to anonymity.”

Chris Masters is one journalist who resists granting sources anonymity. “Journalists bang on all the time about the sanctity of sources,” he writes in his 2002 book, *Not for Publication*, “and you are still left wondering how much hard thinking has gone into the subject... It makes sense for all parties to be clear about their respective obligations.” He goes on:

If a witness tells you something that they believe to be correct and they had sound motivation in doing so, the confidence should be honoured even if the facts are later challenged and perhaps contradicted. But if you come to a secure understanding that the witness has deliberately misled you in order to mislead the public, I see no good reason to maintain the confidence.

THESE issues are vividly explored in *Off the Record: The Press, the Government and the War over Anonymous Sources*, Norman Pearlstine’s fascinating account of his bruising, dispiriting experience during what became known as Plamegate – dramatised in the 2010 film, *Fair Game*. During his period as head of Time Inc., Pearlstine became caught up in this complicated inside-the-Beltway scandal, which began in mid 2003 when a Bush administration official anonymously revealed Valerie Plame to be a covert CIA agent. The leak appears 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 by alleging, against the evidence, that Saddam Hussein’s regime had sought to buy high-grade uranium from Niger.

President Bush appointed a special prosecutor, Patrick Fitzgerald, to investigate the leak, which eventually led to the conviction for perjury of vice-president Dick Cheney’s chief of staff, Lewis “Scooter” Libby. Along the way, the inquiry turned into a brawl between the courts and news organisations that refused to reveal the identity of their 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 protecting confidential sources is almost a matter of tribal honour.

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’s memoir contains some of the most honest and rigorous thinking I’ve read about the journalist–source relationship. No one – not the journalists, nor the Bush administration officials, nor the special prosecutors – comes out of it with reputation



intact.

“We need to distinguish between ‘anonymous’ sources, whose names we leave out of stories, and ‘confidential’ sources, whose names we won’t disclose in litigation,” he concludes. “We must also be more honest with our sources, and we must be vigilant to make sure our sources are honest with us. Reporters must explain that they cannot promise more than the law allows, and they shouldn’t make promises that are against the public interest. Journalists aren’t above the law, and we have to stop acting as though we are.”

How do we distinguish between day-to-day anonymous sources and those to whom we should promise confidentiality? “The source who seeks confidentiality should typically be risking livelihood, life, or reputation, and there should be no other way for the reporter to get the information than from the source... Confidential-source status should never be granted to government officials who are trying to spin a story, especially if they are breaking the law when they do so.”

In an eight-page appendix Pearlstine publishes [model editorial guidelines](#) that build on existing guidelines at Time Inc., the *Los Angeles Times* and the *Washington Post*. These have been reprinted on Pearlstine’s website, and are well worth reading.

Shield laws that protect journalists refusing to divulge the identity of their sources exist in thirty-five American states but not federally, Pearlstine writes. In Australia, federal parliament passed a [shield law](#) for journalists in March 2011 after years of campaigning by the news media, which now hopes similar laws will be passed by states and territories.

Shield laws certainly bolster freedom of the media, which is a good thing, but the Australian act does little to address the issues raised in this article. Amending the *Evidence Act 1995*, the law puts the onus on an aggrieved party to show cause why a source’s identity should be revealed and this cause must outweigh any likely adverse effect on the source and must outweigh “the public interest in the communication of facts and opinion to the public by the news media.”

So far, so good. But as an [analysis](#) by the Parliamentary Library says, the onus applies “whether the piece is a less edifying article or whether it is an investigative piece making the weighty contribution to our democratic system which journalists can make. There is no capacity for the court to consider the worth of the individual piece.” Comments the library’s Kirsty Magarey: “This could have interesting effects.”

I’m sure journalists wouldn’t welcome judges parsing the merits of their every article – judges are scarcely known as the journalist’s best friend – so we come back to the need for us journalists to think carefully before granting any old source anonymity. The problem with this is that the practice is as common as café lattes in newsrooms today.

That makes even more urgent the need to discuss these issues openly, both inside news organisations and elsewhere. There is a paradox that lies at the heart of watchdog

journalism. We habitually demand the right to scrutinise those in positions of power and authority on the ground that keeping secrets is something that at best should be kept to a minimum and at worst breeds unaccountability and even corruption. Yet, we journalists demand the right to keep our own secrets, our sources' identities. Shouldn't we be asking ourselves the same hard question we ask others? •

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