

Australian government gives David McBride no choice but to plead guilty after exposing war crimes

Mike Head

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The Albanese Labor government last week sent a deliberately intimidating message to anyone seeking to blow the whistle on the war crimes being committed or planned by US allies, whether in the current genocide in Gaza or future wars, including against China.

By nullifying his legal defences, the government effectively forced whistleblower David McBride, an ex-military lawyer, to plead guilty on Friday afternoon to three charges of “stealing” classified government documents and giving them to journalists to reveal covered-up murders of unarmed civilians by Australian forces in Afghanistan. As a result, McBride could face 10 years in prison.

Outside the court, McBride was defiant, saying: “I stand tall and I believe I did my duty and I don’t see it as a defeat. I see it as a beginning of a better Australia.”

But three chilling steps by the Labor government, clearly acting in concert with the US and other allies, demonstrate its determination to make McBride’s fate a warning to all whistleblowers.

First, Attorney-General Mark Dreyfus refused to pardon McBride, despite widespread petitions, letters and calls for him to do so. Dreyfus declared that he could exercise his statutory legal power to intervene only in “very unusual and exceptional” circumstances. That was even though McBride’s evidence led to an Australian Broadcasting Corporation (ABC) “Afghan Files” series in 2017 that ultimately helped trigger an official military inquiry.

Initially, in 2014, McBride had sought to use official channels after learning of murders of Afghan civilians by Australian soldiers. After his internal whistleblower reports were suppressed, he began supplying evidence to the ABC between 2014 and 2016.

The military inquiry, finally completed in 2020, found

“credible information” of 39 murders of civilians and prisoners by 25 members of the Australian special forces in Afghanistan, mostly under the previous Gillard Labor government. Only a single soldier has been charged as a result of that inquiry—not the military and political figures responsible—and no trial has even commenced. Meanwhile, the government has relentlessly persecuted McBride to set an example of what will happen to all those who expose US-allied war crimes.

Second, the government’s lawyers strenuously argued in a pre-trial hearing last week against McBride’s main planned defence—based on the post-World War II Nuremberg trials of the Nazis—that he was obligated to refuse to follow unlawful military orders to suppress the war crimes evidence.

The Nuremberg tribunal rejected the efforts of Nazi officers to escape liability for the Holocaust and other crimes on the basis that they were just following orders. Through its lawyers, the Labor government insisted there was no such exception to military discipline.

Special Counsel Trish McDonald, who led the government’s team of prosecutors, told the court that all defence personnel were required to comply with a “general order” and “defence instruction” that official information must be treated as confidential. It would be “inimical to discipline” in the Australian Defence Force (ADF) for an ADF member to believe they could defy this law in the public interest.

In the Australian Capital Territory (ACT) Supreme Court, the trial judge, Justice David Mossop, accepted the government’s repudiation of the Nuremberg principle. He said he would instruct the jury, which was to be selected starting today, to disregard any public interest in the defence. “There is no aspect of duty that allows the accused to act in the public interest contrary to a lawful

order,” he ruled on Wednesday.

McBride’s legal team tried to appeal that decision, but its application was denied by Supreme Court Chief Justice Lucy McCallum on Thursday.

Third, later on Thursday, Mossop ordered that agents of the Attorney-General’s office could seize from the defence’s possession classified documents that McBride’s lawyers had intended to present to the jury. The judge also denied an application from McBride that the trial be permanently suspended because of this secrecy.

Significantly, the government’s barrister, Andrew Berger KC, had invoked a “public interest immunity” claim to block at least some material in the 400 documents leaked by McBride from being shown to a jury. Armed with affidavits from senior Australian security officials, Berger emphasised the potential damage to Australia’s international intelligence community relationships.

That move highlights the government’s preoccupation with protecting its relations with Washington and its other imperialist partners, which are all implicated in the Afghanistan war crimes, as well as in the Gaza genocide, the war against Russia in Ukraine and the preparations for an even more barbaric war against China.

On the street outside the courthouse on Friday, McBride’s lawyer Mark Davis told reporters: “We received the decision just this afternoon, which was in essence to remove evidence from the defence... The Crown, the government, was given the authority to bundle up evidence and run out the backdoor with it. He is no longer able to put it before a jury.”

The government’s intervention and Mossop’s ruling killed McBride’s application for protection under a 2002 federal whistleblowing law. That also demonstrates the fraud of such official pretences to shield whistleblowers who expose unlawful government acts.

Because of those regressive rulings, McBride accepted his attorneys’ advice that, left with no viable defence, he should plead guilty to three charges.

Justice Mossop delayed sentencing until the new year and allowed McBride to remain free on bail, but lengthy imprisonment could still be imposed. The judge approved an “intensive corrections order assessment.” That means McBride may be eligible for punishment out of prison, but under strict conditions that would no doubt include keeping silent on the war crimes.

Months after McBride’s arrest in 2019, the Australian Federal Police raided the offices of the ABC, seeking to

pursue charges against the journalist, Dan Oakes, who co-wrote the “Afghan Files” reports. Prosecutors later declined to charge Oakes, saying it was not in the public interest. Nevertheless, McBride’s prosecution has continued, first under the Morrison Liberal-National government and then the Albanese Labor government.

As the WSWs explained from the outset, the atrocities in Afghanistan were not a one-off aberration. They were an inevitable aspect of that US-led neo-colonial war against an oppressed population—a political reality now being laid out even more blatantly in Gaza.

Labor’s pursuit of McBride further exposes its occasional pretences of seeking the freedom of jailed WikiLeaks publisher Julian Assange, an Australian citizen, whom the Biden administration is seeking to lock away in the US for life. Albanese’s government is fully complicit in all the crimes of the White House, which is intent on persecuting Assange for helping to lay bare US and allied war crimes and regime-change operations in the Middle East and around the world.

An even wider message is being sent. Anyone opposed to the criminal militarism of the Australian and allied governments, whether by publishing, whistleblowing or joining the mass protests against the slaughter in Gaza, can be targeted.

That is why the WSWs has urged all workers, students, young people and defenders of civil liberties to demand McBride’s unconditional freedom. This is inseparable from the fight to mobilise the working class to end the Gaza genocide, free Assange and defend all democratic rights. That requires a direct political struggle against the Labor government and its program of war and austerity.



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