

# Whistleblower who exposed Australia's war crimes in Afghanistan still behind bars

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Last week, Ben Roberts-Smith, Australia's most decorated living soldier, was arrested and charged with five war crimes, including murder. The criminal case has again raised the record of Australian atrocities during the neo-colonial, US-led occupation of Afghanistan.

In virtually all of the media coverage of Roberts-Smith's arrest, one name was conspicuously absent: David McBride. Notwithstanding the belated charging of Roberts-Smith, for offences allegedly committed roughly 15 years ago, McBride remains the first and so far the only individual to have been convicted and imprisoned over Australia's war crimes in Afghanistan.

But unlike Roberts-Smith, there was never an allegation that McBride harmed an Afghan civilian. Instead, his "crime" was to have exposed the atrocities, as a courageous whistleblower. For that, McBride was hounded by the authorities, charged under draconian "national security" legislation and subjected to a secretive trial, overseen by the Labor government, before being thrown in prison where he remains to this day.

The contrast between the two cases is striking, not only for the diametrically opposed character of the accusations, but also for the zeal with which McBride was pursued as against the hesitant and faltering investigation of Roberts-Smith.

Allegations of war crimes against Roberts-Smith, including the murder of Afghan civilians and prisoners, were first reported by Nine publications in 2017 and 2018. In the latter year, the allegations sparked court proceedings. But they were not brought by the state.

Instead, Roberts-Smith launched a civil case alleging that Nine had defamed him. In 2023, Roberts-Smith lost the case, with the judge upholding Nine's defence that its reporting was true. Last year, Roberts-Smith's last avenues of appeal were rejected.

There have been reports that Roberts-Smith was being investigated by federal authorities over war crimes since 2018. One such investigation was apparently dropped around 2020, before a new one began. While the details remain murky, the objectivity is that Roberts-Smith was

permitted to run his own civil case, before facing any criminal charges. And such charges were only laid after the defamation proceedings had blown up in his face.

Roberts-Smith is entitled to the presumption of innocence in the criminal case against him, which must prove the allegations to a higher standard than in a civil court. The impression, though, is of extreme reluctance on the part of the authorities with charging Roberts-Smith, as against their ruthless pursuit of McBride.

The McBride case has far broader implications. Before and since the charging of Roberts-Smith, the official line has been that war crimes in Afghanistan were committed by a handful of special forces who had "gone rogue," without the knowledge of governments or the military command, which bore no responsibility. The attempt to silence and punish McBride gives the lie to the official narrative, pointing to a protracted cover-up.

What did McBride expose? The material he provided to Australian Broadcasting Corporation (ABC) journalists formed the basis of the "Afghan Files" series published in 2017. It extensively documented Australian war crimes in Afghanistan, other than those in which Roberts-Smith was allegedly involved.

The Files outlined at least 10 incidents from 2009 to 2013 in which Australian special forces allegedly killed unarmed civilians as well as insurgents. One of the victims was a six-year-old boy allegedly shot during a 2013 raid.

Most explosively, the documents strongly indicated that military command had been aware of murders for years, and therefore so too would Australian governments have had knowledge.

As per the ABC, "In 2013, sparked by an incident the previous year in which Australians killed two unarmed Afghan men, a series of directives and memos was issued by the Defence Force hierarchy stressing the need to be certain that Afghans were "directly participating in hostilities" before shooting them."

This had the character of internal damage control. The issue was not the war crimes, but military command

simultaneously covering itself, through a wholly internal process, and laying out parameters whereby the special forces could continue murderous operations without the prospect of war crimes prosecutions.

The determination that there be an in-house cover-up was also demonstrated in the treatment of McBride. A military lawyer, he began raising his concerns over the state of the special forces deployment to Afghanistan within official channels in 2014. Only when all such attempts were stymied did he leak documents to the ABC in 2016.

The response was ferocious. In 2019, the Australian Federal Police carried out an extraordinary raid of the ABC's Sydney headquarters. Dan Oakes, one of the lead journalists on the "Afghan Files" was threatened with prosecution, in what would have been an unprecedented attempt to criminalise journalism.

The raid followed the arrest of McBride in September, 2018. Initially facing a single charge of theft of Commonwealth property, in 2019 McBride was hit with four far more serious national security offenses, including under the Defence Act. McBride courageously defended his actions and declared that he would defend himself at trial.

That trial, which began in late 2022, was stacked against him. The federal Labor government ensured that. Its Attorney-General Mark Dreyfus rejected appeals to intervene and end the prosecution of McBride. And Labor invoked national secrecy provisions to stymie a whistleblower defence by McBride, including by barring testimony.

The proceedings were held behind a veil of secrecy. The trial judges ruled against a public interest defence. In a line befitting an authoritarian state, they declared that those subject to military command had to follow its dictates and processes, regardless of any public interest, including in war crimes.

That left McBride with no option but to plead guilty. He was sentenced to five years and eight months' imprisonment with a non-parole period of two years and three months.

In the years between McBride's leaking and his conviction, his allegations had been fully vindicated. When it became impossible to entirely cover up the war crimes, a tightly-controlled and secretive official investigation was launched by the former Coalition government. Its conclusions, in the Brereton Report of 2020, included that there was "credible information" that special forces had murdered 39 Afghan soldiers and prisoners among a host of war crimes.

The Brereton Report simply continued the cover-up in a new form, however, exonerating military command and governments of any responsibility.

That cover-up has continued. While they eventually felt

compelled to charge Roberts-Smith, under conditions where a civil court had already upheld the allegations against him, the position of the federal authorities has been that it is time to "move on" from the war crimes.

The line was summed up by Labor government minister Julian Hill after Roberts-Smith's defamation loss in 2023. He declared that it was "time to draw a line in the sand and rebalance our national conversation about this period. The events of concern occurred well over a decade ago, yet public discourse and some media reporting in relation to these events has implicitly and wrongly conflated the past and the present."

The statement was an extraordinary display of contempt for the dozens of Afghan civilians who had been murdered, under conditions where literally nobody had been held to account.

The Labor government had a particular interest in "drawing a line in the sand." All of the confirmed Australian war crimes occurred when it was in office, as the Labor governments of prime ministers Kevin Rudd and Julia Gillard backed a massive troop surge in Afghanistan and integrated special forces into US-led "kill or capture" raids. The war crimes flowed directly from such operations and from the neo-colonial character of the war as a whole.

Contrary to Hill and Labor, this is not "only" a matter of the past. Labor is today supporting the utterly criminal US assault on Iran, which US President Donald Trump has threatened to "annihilate." That has included the deployment of 90 special forces troops to the Middle East last month, unquestionably to prepare for participation in an invasion of Iran. And in the Indo-Pacific, Labor is completing Australia's transformation into a frontline state for a catastrophic US-led war against Iran.

The fight against imperialist war and to defend democratic rights are inseparable. All opponents of militarism and authoritarianism should demand the immediate and unconditional release of David McBride. And that should form part of the struggle to build a socialist movement of the working class, directed against the source of imperialist militarism, the capitalist system itself.



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