"All that is needed for evil to prosper is for people of good will to do nothing"—Edmund Burke

The Whistle

JULY 2002

NEWSLETTER OF WHISTLEBLOWERS AUSTRALIA INC

PO Box U129, Wollongong NSW 2500

Paige Goodsell courageously spoke out about sexually abusive initiation rites at the North Burleigh Surf Life Saving Club in Queensland, leading to an inquiry and suspensions.

Media watch

Unstitching the Mickelbergs

On June 11, one of the lead news stories was that a WA police officer had admitted to helping frame Brian, Ray and Peter Mickelberg for swindling gold from the Perth Mint nearly 20 years previously.

What was not mentioned in the initial news story was the role of defamation law in preventing discussion of the issue. In 1983, Avon Lovell (now WBA Vice-President) wrote a book, *The Mickelberg Stitch*, providing evidence of a police frame-up. It was selling like hotcakes until defamation actions were launched by the WA police against the author, publisher and booksellers. These cases proceeded for years, funded by a levy on the salaries of police officers. In this way, defamation law helped to cover up corrupt behaviour. — Brian Martin

Businesses deny workers' right to freedom of speech

By Leigh Baker
ANU Reporter, Vol. 33, No. 5,
12 April 2002, p. 1

The basic human right to freedom of speech is denied to people in the workplace throughout the world — including in Australia, an academic at Australia's national University said.

Professor Tom Campbell, a Distinguished Associate at the Centre for Commercial Law and Professorial Fellow at Charles Sturt University's Centre for Applied Philosophy and Public Ethics, said freedom of speech was often restricted more by business than governments.

"Employers have more control over how we communicate and what we say at work than we realise," he said. "People have not typically thought of freedom of speech as something to be expected within the workplace, but as a fundamental human right, of course it is something we should expect in every facet of our lives."

Prof. Campbell said that, because traditional employment law accepted that employers can hire and fire employees at their discretion, employees subconsciously know not to express opinions averse to those of upper management.

"Obviously there are some exceptions, particularly those connected with trade union activities, but in general it is thought that freedom of speech is a luxury that has application only outside the workplace. What goes on inside the workplace is a lot more tightly controlled," he said.

Prof. Campbell said that, in the United States, it is possible for an employee to lose their job for their political opinions or for speaking against their employer's views in general. He said that, although the problem was not getting worse, it was also not improving.

He suggested that businesses should be encouraged to establish internal codes of conduct relating to freedom of speech, saying such a move would prove more effective than the enactment of more legislation.

"It is possible to look at a human right and say: 'The responsibilities here should fall on employers themselves rather than government or state.' That way things could be worked through in a less confrontational and more effective way than counting on the law."

He said that if businesses implemented free speech independently, improved consultation and communication would be perpetuated and less time and money would be spent in tribunals and courts.

"It is definitely in the interest of employers to be more respectful to the wellbeing of their employees — that it is actually good for business.

"Enlightened self-interest is very important because if you do not have a worker who feels respected, then how can you expect them to work to their full capacity?"

Prof. Campbell said it was important to recognise that businesses could make more progress in freedom of speech without further legislation because the latter was only effective in extreme circumstances.

"Everyone needs to realise that they have a role in the implementation of human rights themselves — it really doesn't always have to be written down in the form of legislation to be effective."

And now a word for leakers … don't

An extract from p. 27 of "Margot McCarthy: first lady of defence security," *Defence Information Bulletin*, March/April 2002, pp. 26-29.

[Margot McCarthy is head of the Defence Security Authority. This extract reveals very clearly that official channels for whistleblowers are seen as a means of ensuring that those in power are not exposed or challenged. There is no hint here of the reality that top-level officials frequently leak information for political or bureaucratic reasons. Knowing what happens to so many whistleblowers, this is the best recommendation for leaking that I've seen! — Brian Martin]

"I like to draw a distinction in the security context between leaking and whistle-blowing," Margot said.

"The media have recently been confusing the two terms.

"Whistle-blowing refers to the right and duty of public officials to bring wrongdoing to the attention of the proper authorities.

"Concerns that public officials might have, for instance, about the unethical expenditure of Commonwealth funds, can be brought to the attention of the proper authorities via the chain of command or line management.

"If people, for whatever reason, don't wish to use that avenue, they can approach a member of the Inspector-General Division to raise the matter and, under privacy legislation, their identity will be protected.

"Leaking, on the other hand, is the unauthorised disclosure of information

to people who don't have an official need to know."

Margot made it clear that the media were included in the category of people who don't have an official and automatic need to know about Defence information — unless Defence officials have been properly authorised to share information with the media in the public interest.

"From a security perspective, the media is not a legitimate avenue for the raising of concerns that public officials might have about any matter," she said.

"In part because the media is not an organisation that can do anything constructive with that information apart from publicising it. There are legitimate and longstanding avenues, involving disclosure to the proper authorities, through which public officials can make any concerns they might have known and which can ensure those concerns are acted on.

"So, as a public official, I think military and civilian officials alike both need to be very aware of their duty to protect Defence information because, in the end, to compromise Defence information about operations, about capabilities, can seriously compromise the Defence mission and ultimately cost lives.

"Leaking is never right. Our system of public administration allows for people's concerns to be dealt with legitimately — the Inspector-General in Defence being an obvious case and, in respect of intelligence matters, there's a Commonwealth official, the Inspector-General of Intelligence and Security, who's empowered to address concerns that members of the public or people associated with the intelligence and security agencies may have.

"Things simply haven't got to a stage in our system of public administration, nor do I think they are likely to, where it's legitimate to bypass the legal and authorised way of making concerns known.

" I don't think any senior official in Defence would discourage anyone from bringing perceived wrongdoing to the attention of the proper authorities."

What if an individual becomes frustrated with inaction on a complaint and it appears authorities are trying to sweep it under the carpet?

"The minute you say it's OK in some cases to leak but not in others, you're on a slippery slide that calls into question the whole basis of trust that's placed in us as public officials by the government of the day to protect official information."

Coffee, tea and two-way mirrors: WorkCover goes cloak and dagger at seminar

by Alex Mitchell
Sun-Herald (Sydney), 17 March 2002, p. 13

A group of injured workers was secretly tape-recorded and videotaped at a seminar organised by WorkCover NSW, the agency which manages the State's workplace safety and workers compensation systems.

WorkCover, whose corporate motto is "Watching Out For You", sent letters inviting them to a two-hour discussion "in order to better understand the experiences" of injured workers.

"Specifically, we would like to understand how various aspects of the workers' compensation sysstem may be affecting injured workers," the invitation said. "This project is an important way of finding out how the workers' compensation system in NSW can be improved to help the injured workers."

John Todd, of Cambelltown, out of work for 3 1/2 years after a near-fatal accident, was among the 16 people who gathered at a Liverpool office a fortnight ago to share the experiences.

"My wife, who accompanied me, smelled a rat from the beginning," said Mr Todd, a fitter.

"A table was laid out with food and there was tea, coffee and orange juice available.

"Just after we got started a bloke asked whether the proceedings were being videoed.

"The convenor looked embarrassed and said 'Yes'.

"The bloke went ballistic and stormed out.

"It became apparent that all of us were being observed by people behind a two-way mirror and that we were being videotaped.

"A camera operator and typist were also behind the mirror."

Mr Todd said he and his wife then joined five others in a walk-out. He was surprised that some people sitting at the back of the room — but not facing the two-way mirror — stayed behind.

"I think they had stooges in the audience as well," he said.

"To say the very least, I think these tactics were an invasion of privacy. I think it was disgraceful and insulting that we were not told in advance.

"What was the reason for the cloak-and-dagger approach? What are they trying to hide?"

Mr Todd pointed out that the WorkCover invitation specifically stated: "Your participation in the project and your responses will be held in the strictest of confidence."

He said: "I didn't have much faith in the workers' compensation system before and this episode has done nothing to help."

"People have no idea how devastating it is to be on workers' comp. I've gone from earning $1,000 a week to $320. I've seen 40 doctors and specialists, it's changed my whole life and now they want to put me through this."

Opposition industrial relations spokesman Michael Gallacher, a former police officer, said he wanted to know if the WorkCover project had breached the Listening Devices Act and the Workplace Video Surveillance Act.

He said it was illegal to bug and video conversations and he has asked Industrial Relations Minister John Della Bosca if the "covert operation" had the legal sanction of a court order.

"I am asking for all the documents and papers relating to this project to be tabled in the Legislative Council," Mr Gallacher said. "I want to know how many times this has happened in the past and what justification WorkCover has for all the secrecy."

Mr Della Bosca has promised to conduct a full inquiry.

Gallery critics left whistling in the wind

by Helen Musa, *Canberra Times*, 26 January 2002, p. C3

MOST classics students know the cautionary tale of Cassandra, the Trojan princess who, having spurned the god Apollo, was punished with the fate of prophesying accurately but never being believed.

So it is with most of the innumerable whistle-blowers Canberra has witnessed over many years, and thus it must seem right now to the National Gallery of Australia's most persistent critics, former head conservator Bruce Ford and former fitter-engineer Brian Cropp.

It was no surprise that Ford and Cropp were disappointed by the terse 13 recommendations made to the gallery relating to its complaints mechanisms and record-keeping practices and e-mailed to them this week by Commonwealth Ombudsman Ron McLeod.

Ford, who has spent endless hours preparing documents on all aspects of the gallery's operations, felt, as he put it, "shat upon from a great height". The recommendations, to be implemented quietly by gallery chief Dr Brian Kennedy on the understanding that he will promulgate the findings, were brief and in his covering letter, McLeod made it plain that the door was now shut.

"We will monitor the NGA's actions to comply with the recommendations," he wrote. "Otherwise I do not intend taking any further action on the matters you raised. I should be grateful if you would accept this letter as notification of my intentions as required by section 12 of the Ombudsman Act 1976."

Don't call us, we'll call you.

McLeod's assumption of compliance by the gallery, according to Ford and Cropp, involves an extraordinary leap of faith. Cropp should know. Sacked in February 2000 for drawing attention to staff illness and faults in the maintenance of air-conditioning, he was initially judged by a Comcare investigator not to have been an employee, an opinion reversed last year when the agency deemed him rather to have been a permanent employee. To date, he has received no apology or reinstatement, and the gallery has been granted several extensions in determining the matter.

Such, you may argue, is the fate of the whistle-blower. No million dollar cheque à la Erin Brockovich. The path for the latter-day Canberra Cassandras is a thornier one. Greater efforts for each investigation result in diminishing returns. Normally loyal family and friends groan every time the offending institution is mentioned. Sleep patterns are altered and psychosomatic illnesses often result from investigating minutiae.

Ford and Cropp have now moved on from engineering and peroxide into the broader and even harder to win sphere of "corporate governance". That was also the main issue cited by gallery council deputy chairman Rob Ferguson when he resigned in late December after gallery council chairman Harold Mitchell moved unilaterally to recommend Kennedy's reappointment to federal Arts Minister Richard Alston.

Ford and Cropp are also looking hard at the terms of reference for a new Comcare inquiry into the gallery's implementation of recommendations made in previous investigations, and are urging revisions to the terms. But with Kennedy and Comcare head Barry Leahy steering the inquiry, Ford is already muttering about "putting the foxes in charge of the chook-shed".

A highly critical 27-page report issued by the Ombudsman in September last year noted Comcare's failure to question the gallery's practice of putting individuals under investigation in charge of cases relating to such inquiries.

The pair are not the only critics experiencing frustration in getting action. Senator Chris Schacht wrote to McLeod late last year asking for copies of reports on the gallery, including one by a Canberra firm, Effective People. A Freedom of Information request for the report was earlier declined for fear it might undermine staff confidence in the gallery's ability to probe management and personnel issues. Another door closed.

Yet the gallery is not entirely unwatched. The Competition and Consumer Commission is scrutinising the December purchase of a John Glover painting by the NGA and the Tasmanian Museum, the Australian Heritage Commission has beefed up regulations governing building redevelopment plans, and the close commercial links between Mitchell's own advertising firm's contracts for Federal Government advertising is being investigated by at least two newspapers.

In a letter sent early in the week, Ford and Cropp referred to a brief in The Canberra Times on January 19 under the heading "New checks at gallery". Their frustration was manifest: "We have had to wait over a year for the Ombudsman's report on Comcare's role in the NGA air-conditioning saga to credibly rebut their denials. We have since quietly built on the platform the Ombudsman's report provided us to demand answers to literally dozens of unanswered technical and legal questions.

"Following vehement assertions by two former CEOs of Comcare in this paper that there was little wrong with the NGA's air-conditioning maintenance and that their inspections and reports were above board, the Commonwealth Ombudsman's investigation of Comcare's role revealed aspects of defective administration, some particular to that investigation, others with wider implications for Comcare as a whole," they went on.

All correct, but how are such revelations valued? In May last year, Alston told the Age that "details" like the sacking of John McDonald from Federation, exaggeration of exhibition figures and the blowout of plans for refurbishment needed to be "kept in context" and were secondary to "major achievements" of the gallery like the $7.4 million purchase of Lucien Freud's After Cezanne.

Many would agree with Alston's "common-sense" approach. Yet with smouldering staff dissatisfaction and no signs of remedy, the questions will not go away.

The Public Service Act of 1999 specifies protection for whistleblowers. Often invoked as "best practice", it has relevance for the gallery, but that is cold comfort for Ford and Cropp, who say that Mitchell has never responded to their many letters. You can fairly bet that they will continue to unearth problems in the gallery, and you can equally bet most of them will be credible.

But as with Cassandra, you can also fairly bet that the Olympian powers who call the shots at the National Gallery of Australia will make sure nobody takes much notice of them.

NGA safety whistleblower should be reinstated

Media release
27 March 2002

The National Gallery of Australia should reinstate an employee who was sacked after raising concerns about the safety of the Gallery's air conditioning system, according to the Shadow Attorney-General and Shadow Minister for Workplace Relations, Robert McClelland.

A Comcare report into the incident released by Labor today concludes the NGA contravened the Commonwealth *Occupational Health and Safety Act* in sacking Mr Brian Cropp because "he had complained about a matter concerning the health, safety or welfare of employees at work, namely, the state of the NGA's heating, ventilation and air conditioning systems".

It has taken Comcare more than two years to reach this conclusion after Mr Cropp first raised the issue with Comcare on 28 February 2000.

"The finding confirms that workers everywhere are entitled to raise issues of health and safety without fear of losing their jobs," said Mr McClelland.

"It is fundamental to safe workplaces throughout Australia that workers should not face dismissal when they report safety concerns."

"While the great majority of employers do the right thing and show proper concern for the health and safety of their team, it is very disappointing that one of the nation's premier institutions has been found to have done the wrong thing.

"Minister Abbott also needs to explain why Comcare took more than two years to investigate the incident and report that the Gallery had unlawfully dismissed Mr Cropp.

"In the context of the Government also wanting to introduce harsh new anti-whistleblower laws, it is a grave concern that it has taken more than two years for Mr Cropp to be vindicated by Comcare after he first blew the whistle on the Gallery's air conditioning system."

Section 76 of the *Occupational Health and Safety Act* prohibits an employer from dismissing or prejudicially altering an employee's employment because the employee has complained about a matter concerning the health, safety or welfare of employees at work.

Shortly after Mr Cropp reported his concerns about the air conditioning, a Gallery employee circulated a memorandum stating that Mr Cropp "believes our HVAC [air conditioning] system is in effect in very poor condition (even dangerous) and I believe that his beliefs would render it unwise to involve him in HVAC maintenance". Mr Cropp was dismissed shortly thereafter.

For further information:
Andrew Dempster 0419 290 610

[See related item on p. 15]

Sharp note from a whistleblower

This career FBI agent, lawyer, ethicist, police officer and mum is telling the truth and making waves

Nick Anderson and Mark Fineman
Sydney Morning Herald,
28 May 2002, p. 8
(from the *Los Angeles Times*)

For years Coleen Rowley was a star of the FBI. From the hunt for Gianni Versace's murderer to an Animal Liberation Front attack to protect lab rats, she always played it straight, according to neighbours, colleagues and the public record.

Ms Rowley, a lawyer, ethicist, police officer and triathlete, cultivated an image of determination, candour and loyalty to her agency.

Now the 47-year-old career FBI agent has emerged as a singular, critical voice from within — a whistleblower who last week challenged FBI headquarters' decisions in the September 11 terror investigation. And Ms Rowley is getting high marks for it from within Minnesota's federal law enforcement circles and in her flag-strewn suburb, where she and her husband organised the neighbourhood watch program and often jog together.

Retired FBI agent Larry Brubaker said Ms Rowley was a perfectionist who "would stand up for what she thought".

In the days since she did just that — delivering a scathing, 13-page letter to the FBI director, Robert Mueller, and legislators in which she castigated the agency's investigation of the only suspect directly charged over the September 11 attacks — Mr Brubaker said the emails he had received were piling up in her favour.

Ms Rowley questioned the response by FBI headquarters to the arrest of Moroccan-born Zacarias Moussaoui at a suburban Minneapolis motel on August 16 — three weeks before the attacks on the World Trade Centre towers and the Pentagon.

Moussaoui triggered the suspicions of a local flight instructor in suburban Minneapolis after paying $8000 ($14,370) in cash to take a flight-simulator course for a Boeing 747, despite having failed to fly even a single-engine Cessna solo after more than 50 hours of instruction.

The flight instructor called the FBI, which confronted a belligerent and unco-operative Moussaoui. Local FBI agents turned him over to immigration authorities for a visa violation and impounded his possessions, which included a laptop computer, and focused all their efforts on getting a warrant to search that computer.

Ms Rowley says in her letter that officials in FBI headquarters ignored evidence and intelligence that could have justified a special national-security warrant to search the laptop, which contained files on crop-dusting and commercial-flight simulations.

FBI lawyers in Washington reviewed the Minnesota field office's search warrant request for Moussaoui's computer and determined there was insufficient probable cause to even request it.

Screening and handling agents' search warrant requests is a big part of Ms Rowley's job as the Minnesota field office's general counsel.

Not only did she know the law, but her job also has been to interpret it. "She's very highly ethical," Mr Brubaker said. "She gave classes in ethics to our agents every year."

Some legislators now see her as a potential star witness at congressional hearings on lapses in the terrorism investigations.

Workers suffer for whistle-blowing

Transcript from ABC *7.30 Report,* 25 March 2002

MAN: We've been treated like criminals for doing the right thing.

NORM BREW: It was a nightmare. You were under constant threat of being harassed, abused even if you did the right thing.

PETER CAVE: Norm Brew has six young children. His colleague Lindsay Woods has a pregnant wife and a baby daughter. Both had a lot to lose in reporting what was going on in an anonymous office at the end of platform three at Wyong station on the NSW Central Coast.

A year ago, while working as revenue enforcement officers for State Rail, they blew the whistle on what they claim was a culture of bullying, harassment and illegality by some of their workmates who were jokingly known as the 'marines.'

NORM BREW: We were told the night that we finished at Goulburn Academy by two senior managers that we were going into a unit that did things their way, not the railway's. They took no prisoners and they got the job done no matter what they had to do.

LINDSAY WOODS: They were breaking the law, false imprisonment of passengers, harassment of other staff. They had illegal databases with tens of thousands of names on it.

PETER CAVE: Revenue protection officers are not special constables. They're told during their training about the limits on their power. What are you supposed to do when you stop someone who hasn't got a ticket?

NORM BREW: Firstly you will ask them for identification. If they want to give you the identification they give it to you. We haven't got the right or the law behind us to demand identification.

PETER CAVE: What were you asked to do at Wyong on a daily basis?

NORM BREW: Demand identification.

PETER CAVE: What if you didn't get it?

NORM BREW: Arrest the person and have the police called and hold the person until the police arrived.

PETER CAVE: Woods and Brew claim that they and their colleagues were ordered to demand identification such as tax file numbers and Medicare and pension card details in contravention of Federal law. That information was meticulously collated, along with the names and addresses of people suspected, but not convicted, of fare evasion and then entered into a computer database.

LINDSAY WOODS: We complained of it to management on March 1. Approximately three months later, staff at Wyong were still putting data into the database.

CHRIS PUPLICK, NSW PRIVACY COMMISSION: This was drawn to the attention of Privacy NSW. We raised it with State Rail immediately.

PETER CAVE: Chris Puplick is the NSW privacy commissioner. He became involved in the case after receiving a complaint.

CHRIS PUPLICK: Clearly there are copies of this material around. What I want to know now is what is State Rail doing in relation to the people who have committed this outrage? And secondly, what steps are they putting in place to ensure that nothing like this happens again?

PETER CAVE: What action was taken against those who compiled the database?

MICHAEL GLEESON, NSW STATE RAIL AUTHORITY: I think it needs to be understood what their motivations may have been. Now I'm of the view, and I think CityRail is of the view, that in good faith they believed they were trying to keep track of those people who were serial fare evaders.

PETER CAVE: So the message to CityRail employees is you can break state and Federal laws and not be punished?

MICHAEL GLEESON: No, the message is we will not tolerate such things and if found, we will have them destroyed and counsel people as to what they should do in the future.

PETER CAVE: The database at Wyong was wiped from the computers, but so far no charges have been laid. What do you believe should have happened to the people who collected the information?

CHRIS PUPLICK: I think they should have been summarily dismissed. I don't think there is any place in a government organisation for people who go around improperly collecting information, compiling databases on people, copying those databases, presumably spreading them around the place, gossiping about them.

PETER CAVE: The two men that Woods and Brew accused are appealing against disciplinary measures imposed for relatively minor breaches of State Rail rules, but for the whistle-blowers, the repercussions have been devastating. Some of their colleagues refused to work with them and State Rail transferred them, saying it was for their own welfare.

LINDSAY WOODS [reading]: It was not a part of, or as a result, of State Rail forming a view about the complaint.

PETER CAVE: They refused to accept that transfer and they're now living on welfare benefits, engaged in a paper war seeking compensation and reinstatement at Wyong.

LINDSAY WOODS: We reported corruption on March 1. We didn't hear anything for approximately seven months. Basically the first thing we heard in seven months was we're under investigation. "You're transferred."

We asked why we were under investigation and they said that an illegal petition had gone in, signed by others at the Wyong depot. We wrote in a response to that.

They then wrote back two weeks later, saying that we weren't transferred under investigation, we were actually transferred because of safety reasons.

MICHAEL GLEESON: It is my view that we believed that there was an occupational health and safety issue there. Everyone wants to work in a harmonious workplace and at that stage, it was not a harmonious workplace.

It was potentially volatile and so as we could keep a team in place to catch the crooks who are cheating the system, Mr Woods and Mr Brew were moved temporarily and since then have been offered a position in our elite squad.

PETER CAVE: They were moved because they were troublemakers?

MICHAEL GLEESON: No, that's an unreasonable representation. Mr Woods and Brew were moved aside temporarily while an investigation took place. Two people have subsequently been demoted.

We then attempted, from November 1 to February 7, to have a meeting with Mr Woods and Mr Brew to try and work out what they would like to take place. They would not come into a meeting. On February 7 they were offered a position with our elite squad. They have knocked that back.

PETER CAVE: Why didn't you take the job they offered you?

LINDSAY WOODS: The job they offered us — the majority of it was back shift and night shift down in the city.

NORM BREW: The job was 12 months. When asked what happened after the 12 months, they just said flatly, "We don't know."

PETER CAVE: Does CityRail agree there was something rotten going on?

MICHAEL GLEESON: There is no question that the Wyong situation was one that couldn't continue. Now, there is a new manager in place there. There is a new head of security, generally, in CityRail and we are working very carefully with both the unions and with the personnel in Wyong to try and sort the area out.

PETER CAVE: That's scant comfort for Woods and Brew, off work now for five months and convinced that they, and not the wrongdoers, are being punished.

NORM BREW: If I had of known it was going to be like this, I probably would have had second or third thoughts, I wouldn't have done it. But it had to be done because people need to know.

MICHAEL GLEESON: It is our great hope that there can be some assimilation with Woods and Brew. My advice to them, if they're watching this, is to make contact with management again. Let's try and find a way forward. It is our great hope that we can utilise them to the best to their ability. But, let's see.

LINDSAY WOODS: Our career is finished in CityRail.

NORM BREW: Gone. No matter what they offer us, we know, personally, that it will only be a matter of time.

Political intelligence

What happens when U.S. spies get the goods — and the government won't listen?

Ken Silverstein and David Isenberg
Mother Jones, Jan/Feb 2002, p. 36

In 1989, an intelligence analyst working for then-Secretary of Defense Dick Cheney issued a startling report. After reviewing classified information from field agents, he had determined that Pakistan, despite official denials, had built a nuclear bomb. "I was not out there alone," the analyst, Richard Barlow, recalls. "This was the same conclusion that had been reached by many people in the intelligence community."

But Barlow's conclusion was politically inconvenient. A finding that Pakistan possessed a nuclear bomb would have triggered a congressionally mandated cutoff of aid to the country, a key ally in the CIA's efforts to support Afghan rebels fighting a pro-Soviet government. It also would have killed a $1.4-billion sale of F-16 fighter jets to Islamabad.

Barlow's report was dismissed as alarmist. A few months later, a Pentagon official downplayed Pakistan's nuclear capabilities in testimony to Congress. When Barlow protested to his superiors, he was fired.

Three years later, in 1992, a high-ranking Pakistani official admitted that the country had developed the ability to assemble a nuclear weapon by 1987, In 1998, Islamabad detonated its first bomb. "This was not a failure of intelligence," says Barlow. "The intelligence was in the system."

Barlow's case points to an issue that has largely been overlooked in the post-September 11 debate about how to "fix" the nation's spy networks: Sometimes, the problem with intelligence is not a lack of information, but a failure to use it.

In the early days of the Vietnam War, a CIA analyst named Sam Adams discovered that the United States was seriously underestimating the strength of the Vietcong. The agency squelched his findings and he left in frustration. During the Reagan years, Melvin Goodman, then a top Soviet analyst at the agency, reported that the "Evil Empire" was undergoing a severe economic and military decline. Goodman was pressured to revise his findings because, he says, then-CIA director William Casey wanted to portray a Soviet Union "that was 10 feet tall" in order to justify bigger military budgets. (Reagan's secretary of state, George Shultz, put it more delicately in his memoirs: Reports from Casey's CIA, he wrote, were "distorted by strong views about policy.")

At about the same time Barlow issued his warnings about Pakistan, an Energy Department analyst named Bryan Siebert was investigating Saddam Hussein's nuclear program. His report concluded that "Iraq has a major effort under way to produce nuclear weapons," and recommended that the National Security Council look into the matter. But the Bush administration which had been supporting Iraq as a counterweight to the Ayatollah Khomeini's Iran ignored the report. It was only in 1990, after Saddam invaded Kuwait, that clear-eyed intelligence reporting on Iraq came into fashion.

More recently, the Clinton administration went to great lengths to protect Boris Yeltsin, who was viewed as a critical partner in Russia after the collapse of the Soviet Union. One former intelligence analyst says that Al Gore and his national security adviser, Leon Fuerth, would "bury their heads in the sand" if presented with any derogatory report about Yeltsin. "Taking unpopular positions means that you get bad reviews and don't get promoted," he says. "Some analysts simply stop pursuing information because they know that it can get them into trouble."

A different type of political filtering takes place when the CIA relies on "liaison relationships" with foreign intelligence agencies, whose reports are often colored by the biases of the local elite. One notorious example came in Iran in the 1970s, when despite decades of cooperation with the secret police, the U.S. government failed to grasp the extent of public opposition to the Shah. Less than four months before Khomeini's revolution toppled the Iranian monarchy in early

1979, the Defense Intelligence Agency reported that the Shah was "expected to remain actively in power over the next 10 years."

In Pakistan, the CIA has worked closely with the powerful Inter-Services Intelligence agency (ISI) ever since the two institutions teamed up in the 1980s to fund and direct the Afghan guerrillas. After the Taliban took power in 1996, the CIA relied on the Pakistanis for help in monitoring the regime. But the agency reportedly got little support or information from its ally in Islamabad — probably because ISI was also one of the Taliban's primary backers.

"We have consistently misled ourselves because we don't have our own sources of information," warns Burton Hersh, author of *The Old Boys: The American Elite and the Origins of the CIA.* "If we had had people working the bazaars in Saudi Arabia or Egypt, we would have seen that there is a lot of unhappiness and that even upper-middle-class people were thinking about joining up with bin Laden."

Reforms of U.S. intelligence — whether they involve bigger budgets, better recruiting, or more effective spying — won't make much of a difference, Hersh and others warn, as long as officials are unwilling to hear the bad news.

Blowing the whistle

by Caroline E. Mayer and Amy Joyce
Washington Post
Sunday 10 February 2002, page H01

As America watched Enron Corp. officials sweating in the Washington spotlight last week — swearing ignorance of misdeeds, pointing a finger at others or simply taking the Fifth [refusing to answer questions under oath on the grounds that it could incriminate them] — there was the predictable buzz in the air. But above the clicking of cameras and the low rumble of lawyers conferring with clients, there came another sound.

Was it the echo of whistles being blown elsewhere in the country? Is it wishful thinking on the part of fearful stockholders, or might the spectacle of management in the hot seat this time embolden a new flock of corporate canaries to sing in alarm when they discover their company's cooked books, discriminatory practices or less-than-lawful dumping?

While every worker with a 401(k) plan [corporate pension plan] or individual retirement account quakes, wondering when and where the next corporate bomb will detonate, will uneasy employees come forward, whether it's to keep their company from being Enronned or to save their own jobs or, maybe, just to right wrongdoing?

Employees contemplating blowing the whistle may be tempted to take some courage from Enron Vice President Sherron Watkins, who last summer and fall explained her misgivings, first anonymously and later in person, to Enron Chairman Kenneth L. Lay. She told him she was "incredibly nervous" that the company might "implode in a wave of accounting scandals."

And there's Margaret Ceconi, who e-mailed Lay saying the company had "knowingly misrepresented" the earnings of one of its major divisions.

And the congressional hearings revealed that concerns were also raised by Jordan Mintz, Enron's vice president and general counsel for corporate development. As the corporate lawyer whose job it was to scrutinize deals, Mintz not only questioned whether Enron's tangled partnerships were fair to investors but also sought the opinion of outside lawyers.

Ceconi no longer works at Enron, but Watkins and Mintz do. That's remarkable in itself. What's more, Watkins has a new, larger office at Houston headquarters, and Mintz has been promoted — outcomes that are not the norm for most corporate challengers, who often find themselves in a smaller office, less important position or, most likely, out of a job. (It no doubt helped that the company's collapse was so swift that Watkins and Mintz outlasted the top officials who might have swatted them down.)

While some call the Enron employees whistle-blowers, others adamantly say that's not the case, given that they never took their concerns public.

But no matter what label you apply to them, is it possible that their examples signal a new moment for corporate challengers?

Some employees appear to think so, as they dial into special telephone hot lines to report concerns about their companies.

Two of the nation's largest firms that maintain hot lines for other companies report a noticeable increase in employee calls. At Pinkerton Consulting and Investigations, which handles hot lines for about 1,000 companies, calls have risen by 12 percent since the Enron scandal came to light. At Network Inc., which operates toll-free lines for about 650 companies, there's been an even larger spike, with calls up 35 percent.

"I can't say scientifically it's all due to Enron, but there's clearly a spike of interest in our services," said Network's president, Ed Stamper.

Pinkerton thinks there's more to come. "I think employees will recognize that ignoring issues or misconduct in the workplace may in fact come back to impact them," said Clifford Thomas, Pinkerton's vice president of compliance services. "It may eventually affect their livelihood or, worse yet, their retirement nest egg."

"The current cultural climate" has changed, said Myron Peretz Glazer, a professor of sociology at Smith College who with his wife, Penina Glazer, wrote a book about whistle-blowers a decade ago. There's a feeling that "there are serious problems, and we want you to speak up and there will be a lot of support for you."

Yet the new era for whistle-blowers may only be transitory. "There's always a spike" in complaints after a big scandal, said John P. Relman, a Washington lawyer who has represented many employees in discrimination suits, including Secret Service agents against the FBI. "A lot of people feel empowered when something like this happens and they see themselves as having a little bit of protection." But that feeling lasts only a limited time, he added.

That's partly because would-be challengers have seen throughout the years that there are powerful forces arrayed against the outlier, the naysayer, say lawyers and public interest advocates who have worked with whistle-blowers. They see that most corporate tattletales are not as fortunate as Watkins. More often than not, company gadflies are, quietly and privately, fired. No congressional

hearings, no public uproar, just termination.

A More Typical Case

Consider the case of Roy Olofson, who was vice president of finance for Global Crossing Ltd., the telecommunications firm that filed for bankruptcy on Jan. 28.

Last August — the same month Watkins sent that now-famous letter to Lay — Olofson wrote to Global Crossing's general counsel alleging that some of the firm's accounting practices inflated the company's revenue. He was placed on paid administrative leave within a few weeks and fired at the end of November.

Global Crossing says the 63-year-old Olofson was let go as part of a substantial reduction in the company's workforce. The company added that his accusations were investigated, found to be without merit and are only being raised now as part of an effort by Olofson to win a multimillion-dollar settlement for wrongful termination. That charge, in turn, has prompted Olofson's attorney to accuse Global Crossing of running a "carefully orchestrated smear campaign to divert attention from Global Crossing's accounting irregularities." The Securities and Exchange Commission is now investigating Global Crossing's books — as well as Enron's.

Yet the mushrooming impact of Enron's downfall — as it prompts other companies to restate earnings and causes nervous investors to sell off stocks — may overshadow Olofson's experience and encourage other employees to come forward, at least for now.

"If people see high and mighty, even arrogant companies like Enron, being brought to justice, maybe they will have the courage to stand up and say, 'I'm not going to be a part of it,' even though it presents a great risk in the long run, a real ordeal," said John Phillips, a Washington lawyer who has represented hundreds of employees who have accused their companies of defrauding the government.

Some of the complaints will be lodged by sincere do-gooders who want to right a wrong. But not all, said Myron Glazer. Many employees may come forward, he said, "for fear of being implicated" in whatever corporate shenanigans eventually come to light.

'Life-Changing Event'

Talk to a whistle-blower or a lawyer who has represented one and you almost always hear the same statement: "Whistle-blowing is a life-changing event." The reason is simple, according to C. Fred Alford, a University of Maryland professor and author of *Whistleblowers: Broken Lives and Organizational Power* [reviewed in the January *Whistle*]. Reprisals are almost certain, he said. "Almost half of all whistle-blowers are fired, and of those, half lose their homes, and [of] the ones who lose their homes, more than half will lose their families as well."

Even Watkins might have eventually lost her job if Enron had not "self-destructed," Alford said. It was too soon to tell: Many companies turn their corporate challengers into corporate pariahs and let them twist in the wind, then fire them after about two years — long enough after the fact to make the termination not look like retaliation.

"For every Sherron Watkins, there are hundreds of whistle-blowers who never make even the back pages of newspapers, so they lack that protection of visibility and they are gotten rid of, sometimes legally, sometimes not. Then they spend the next 20 years of their lives trying to figure out what happened to them," Alford said.

It's no wonder then that "corporate morality becomes doing what the boss tells you to do," he added.

Most whistle-blowers are not as famous as Karen Silkwood, the worker at a Kerr-McGee plutonium-production plant who died in a mysterious car accident when she was gathering evidence of poor plant safety, or Jeffrey Wigand, the Brown & Williamson Tobacco Corp. executive who was fired for revealing that the company deliberately hid potentially damaging research about smoking. Silkwood was the subject of a movie by that name, and *The Insider* depicts Wigand's story.

But famous or not, the stories of most whistle-blowers are similar: Not only are most fired, but they also find it virtually impossible to find a comparable job.

As one whistle-blower who declined to be named described life after being fired for questioning the firm's financial transactions: "There is a pervasive feeling that a whistle-blower is someone who has betrayed the employer he worked for. He's labeled as idiosyncratic, disgruntled and considered an outcast, someone who's too much of a risk to hire." It took a year for this employee to find another job, and it pays much less than the old one.

The Corporate 'Family'

It's not just the fear of reprisal that makes it difficult for some employees to speak out: It's also the corporate culture, which in some firms takes on the intimacy of a second family — in some cases, the only family. Employees can "become so identified with the organization and its practices that it's hard to see something wrong, and someone who reports something questionable is going to look like someone who doesn't care about the family," said Suzanne Masterson, a professor of management at the University of Cincinnati College of Business Administration. This was especially the case with so many dot-coms, where camaraderie was the key to the culture, Masterson said.

It's important to notice that Watkins, Mintz and Olofson pointed out their companies' problems with what seems, from the outside, a decent amount of discretion and consideration for the firm. They didn't steal documents and run to the local newspaper. They had standing in their organization and had expertise in the matters they were questioning. They took their concerns quietly to the top guy — and nothing happened. Watkins got the corporate equivalent of a pat on the head, Mintz's concerns were basically overlooked, and Olofson got the boot. Given that, it seems legitimate to wonder whether corporations can tolerate any challenge to their ways of doing business, no matter how genteel an employee is in making that challenge.

[Remainder of article omitted.]

Hoser update

See http://www.smuggled.com/ for the latest information from and about Ray Hoser. [Unfortunately, for reasons of length, it is impossible to publish Ray's long submission to *The Whistle*. See page 15 for publishing guidelines.]

Bystanders

by Brian Martin

In the face of corruption and abuse, why do so many people stand by and do nothing? Whistleblowers are a tiny minority. Lots of others are aware of the problems but seem content to be bystanders. This lack of action can be perplexing and aggravating to whistleblowers.

To understand why co-workers and others so often do nothing, it is illuminating to understand how we ourselves are bystanders. Sad to say, we are all bystanders in some ways but we seldom think about it.

We all know that there are people dying of starvation in many countries around the globe. We all know that there are brutal dictatorships. We all know that there are numerous wars going on, with millions of refugees. We all know that torture is widely used.

We all know about the problems. What are any of us doing about them?

Now listen to the responses. "That's someone else's problem." "There's nothing I can do." "I have enough problems of my own." "They brought it on themselves."

The reality is that we can all do a lot to help. Contributions to human rights organisations like Amnesty International make a difference to political freedoms. Contributions to independent aid organisations help save lives. Even a few dollars can make a difference to a child's life.

My aim here is not to make you feel guilty but to illustrate that we all know about human suffering but manage to blot it out of our consciousness most of the time. The same processes help explain why most people are able to ignore the corruption and abuses around them.

My thinking on this is inspired by a recent book by eminent sociologist Stanley Cohen, *States of Denial: Knowing about Atrocities and Suffering* (Polity Press, 2001). Cohen systematically analyses processes of denial by both individuals and governments. The book is impressive in its scope and insight. I can only introduce a few ideas from it here.

Cohen describes five methods of denial.

1. Deny responsibility: "I don't know a thing about it."

2. Deny injury: "It didn't really cause any harm."

3. Deny the victim: "They had it coming to them."

4. Condemn the condemner: "They're corrupt hypocrites."

5. Appeal to higher loyalties: "I owe it to my mates."

These methods can be used by individuals or governments and by perpetrators or bystanders. Germans living near death camps under the Nazi regime could hardly be unaware of what was going on, but used one or more methods of denial.

Most of us are familiar with all sorts of human tragedies. Consider, for example, Afghani civilians who were killed or injured in the US anti-terrorist assault. Denial can take many forms. Have you heard any of these comments?

1. "I don't know anything about it."

2. "I don't actually believe many civilians were hurt."

3. "What did they expect, supporting the Taliban?"

4. "Those meddling bleeding hearts should butt out."

5. "We've got to support the US government."

When corruption or abuse is widely known in an organisation, only a few speak up. The rest can deny any responsibility in various ways.

1. "I never knew a thing about it."

2. "It's just a trivial matter. Why get upset?"

3. "If people are stupid enough to get ripped off, they deserve it."

4. "Whistleblowing my eye! They're stirring up trouble to hide their own poor performance."

5. "I've got to stick by my mates."

There can be whole cultures of denial. Everyone in an organisation knows about the exploitation, but each person either says nothing or mouths platitudes about it being a wonderful caring place.

When a single person speaks up, it breaks the silence, but this may not be enough to change the culture. Cohen tells of two main ways of forgetting. One is through active cover-up and suppression, such as rewriting history. Whistleblowers can be shut up by threats of reprisal, defamation actions, silencing clauses and a host of other methods. The other route to forgetting is through diffusion, namely getting lost in the abundance of ongoing information. A whistleblower's story may be news today but be out of date tomorrow. Before long no one wants to know.

Cohen says that denial is something central to human functioning. We have to live with it. But some sorts of denial are far more damaging than others. If we donate to a good cause, but deny that our real motivation is to avoid guilt or to impress others, is that so bad? Most people who, on hearing of torture and other human rights abuses, use a form of denial to avoid taking personal responsibility, do so because it's all they can do just to get by in their own lives, not because they are malicious. Cohen says that only a few people are evil.

What are the implications for whistleblowers? It is important to recognise that denial of responsibility is a predictable human response. So rather than just condemning those who just sit by and do nothing to help, be prepared for this lack of response and take it into account in devising your course of action. Learn to decode the standard responses, realising that what people say is often an excuse for an instinctive avoidance of responsibility.

Go get some leaflets from Amnesty or other human rights or charitable organisations and look at the ways they try to break through people's psychological defences. Such groups have

a lot of experience in promoting worthy causes. You can pick up some ideas for putting whistleblower stories on the agenda. And remember that the most you can hope for is that just a few people will become active. Bringing those few on board is a key to success.

TONY DOUGLAS GROSSER
Opening address to the jury of his defence (extract)

DUGGAN J
NO.392/1994
R V TONY DOUGLAS GROSSER
TUESDAY, 2 APRIL 2002
RESUMING 10.09 A.M.
JURY PRESENT

ACCUSED: Ladies and gentlemen of the jury, my name is Tony Douglas Grosser. On the charges that I am on before this court my defence is that I acted in genuine self-defence.
[…]

In my mind on 3/5/1994 soon after 2 p.m. the man at the back door of my home with the gun in his hand was a bad man, an evil man known to me as Cass, who I was told prior to 3/5/1994 was to kill me. I had reported the threats to my life to police prior to 3/5/1994. Those threats were from Cass or related to him and his associates.

On 3/5/1994 I was protecting my wife and two baby daughters' lives as well as my life as I was living in fear from criminals killing us at our home.
I had reported the man know to me as "Cass" to police for serious criminal activity. I reported Cass to police in 1993 and 1994 as a Mafia and bikie gang associate who was involved in drug dealing and shooting of two people. I also reported that Cass was going to harm police in South Australia with plastic explosive. I was told on various dates that Cass knew I had put him in to police for criminal activity so I suggest I had good reason to fear the man "Cass".

In my mind, on 3/5/1994, both Cass and associated criminals were to kill my wife, two baby daughters and myself. I did not know who I could trust. To my mind, on 3/5/1994, as I had reported both Cass and corrupt South Australian State Police for criminal activity, both the groups had victimised, harassed and persecuted me. To my mind both groups wanted to kill us.

I was living in great fear of people killing my family and me. I was trying to do good against overwhelming odds of bad people.

On the day of the so-called siege at my remote house at Nuriootpa on 3/5/1994 there were possibly representatives of two groups in the area who were out to kill me. That is to silence me. One group that I had been warned about, and I was ready for them, was the Mafia who profited from drugs and crime. Their representative likely to be in the area was their bikie gang associate named "Cass". The other group I was not aware of was corrupt police who also profit from drugs and crime.

When a person was seen by me sneakingly approaching my back door at about 2 p.m. on 3 Many 1994 not in any way identifiable to me as a policeman, with a gun in his hand, I shot warning and deterrent shots towards him in self-defence. This man I thought was "Cass". I believe he had shot at me first on 3/5/1994 soon after 2 p.m. Unfortunately, that person at my back door was Mr Derrick McManus of the STAR Force, who I had mistaken for the expected bikie gang member and Mafia associate, "Cass". It was clearly a case of mistaken identity, ladies and gentlemen.

From the events that happened before, during and after the siege of 3 May 1994 and by the manner of the conduct of the siege it is now very clear that corrupt police were also wanting to kill me at that time. I was shot and/or hit in the head and traumatised at least twice from the very beginning of this so-called siege.
In Australia both of these criminal groups, being the Mafia and their bikie gang associates, and corrupt police, work closely together and have done so for many years in organised crime. I as a whistleblower on drugs and police crime had been warning authorities and various persons throughout Australia about the activities of these two groups and the links between them for at least two years prior to 3/5/1994.

In September 1991 at the invitation of South Australian Police Commissioner, Mr David Hunt, in Operation Hygiene, I had informed South Australian Police of what I knew about police involvement in crime, being whisky smuggling and stolen goods, and about South Australian policeman Colin Whitford's death. Later in 1992 and onwards I gave more information to police including that the Royal Australian Air Force were bringing in drugs from Asia to Australia and distributing them in various States via a network to distributors. I informed police that in South Australia a Royal Australian Air Force drug distributor was my uncle, Robert Frank Grosser, who was a policeman in the Military Police of the Australian Air Force.

Robert Frank Grosser, my uncle, worked in with Bruno Lee Romeo, also known as Bruno Romeo junior, a senior Mafia figure. Robert Frank Grosser also worked in with other criminals in South Australia, including corrupt South Australian State Police and Federal Police and others. Bruno Lee Romeo lived at Callington, South Australia, at the old police station at the time and that time being approximately 1979. From 1991 onwards the above information was given by me verbally and in writing to numerous persons, police and authorities around Australia, including to Whistleblowers Australia.

Also, in particular about 11 months before the killing of National Crime Authority police officer Mr Geoffrey Bowen, by a bomb, on 2 March 1994 at the South Australian National Crime Authority headquarters in Waymouth Street, Adelaide, I had warned a Ms Virginia Lynch at the Adelaide National Crime Authority in person on 16/4/1993 that based on information from Cass they were in danger of being blown up by a Mafia bomb. All those I notified failed in their duty of care and did nothing effective to stop this awful bomb.

South Australian Police and Mafia associates responded to my various disclosures from 1991 and later by repeated acts of intimidation, harassment and threats right up to the siege, so called, of 3/5/1994.

When the bombing finally occurred and Mr Geoff Bowen was killed, the media throughout Australia widely publicised my previous warnings to police and others about the Mafia intentions and that the police had ignored my warnings.

There was a front page story in *The Advertiser* on 5/3/1994. Because of my previous and well known whistle-

blowing on Mafia and corrupt police involvement in drugs and crime and profiteering by these groups and because of the intense publicity immediately after 2 March 1994 throughout Australia of police ignoring my warnings of the bomb that killed Geoffrey Bowen, both parties, that is Mafia associate Cass and corrupt police were in the Nuriootpa area around 11 March and 3 May 1994 respectively to silence me. I was aware of the bikie gang Mafia associate Cass's likely presence because of information I had received, but did not suspect the police, at that time.

My defence for this trial is to attempt to show to the jury and this honourable court that I genuinely acted in self-defence on 3 May 1994 to save my family's lives and my own and that the statements I have made in this summary of my defence are true and correct.

CONTINUED …

[The result of this case was that Tony Grosser was again convicted.]

Whistleblowing and *The Trial*

A Kafkaesque experience

Part I

Kim Sawyer

This is an edited version of a talk given to the Existentialist Society Meeting, Melbourne, in April this year. I particularly acknowledge the contributions of David Barrow and Fred Jevons in the preparation of this paper.

"Someone must have been spreading lies about Josef K for without having done anything wrong he was arrested one morning." — F. Kafka (*The Trial*, Chapter 1).

I first encountered Josef K in 1980 in the last months of my doctorate. Through Kafka, I experienced the bewilderment of K, the ordinary yet exemplary bank official arrested for no apparent reason at the start of *The Trial*. Vicariously, I experienced K's isolation, his need to justify himself, his uncertainty, and the arbitrariness of the law and the institutions which judged him. I read of Josef K's summary execution one day before I submitted my thesis. And I have revisited K's dilemma many times since.

In 1980, I had another encounter. On a road outside Canberra, I witnessed a head-on collision. For an hour, I attended to one of the drivers. More than twenty cars, twenty bystanders, stopped but did not render assistance. This was my first encounter with the bystander problem, specifically the non-involvement of the bystander. The trial of Josef K is contingent on this non-involvement, and even in his final moments, K comes upon a bystander, when his eyes fall on a house and a human figure. He asks "*Who was it? A friend? A good man? Someone who cared? Someone who wanted to help?*" K died in the next paragraph. The conjunction of the bystander and the death of K was not by chance. For, the bystander and more particularly the nonfeasance of the bystander, was critical to the demise of Josef K.

By his own admission, Kafka immensely absorbed the negative aspect of his time. *The Trial* is representative of problems faced and foreshadowed in post World War I Europe, including the extremes and arbitrariness of communism and Nazism. Josef K's dilemma is also exemplified in the complications of the modern era, no more so than in the problem of the whistleblower. As Frank Campbell (2000) observes in his review of William De Maria's book *Deadly Disclosures*,

> *"If there's a problem, torture the messenger. Mix some Stalin with neat Kafka, and make the whingeing bastard drink it."*

The trial of Josef K is the trial of most whistleblowers. When a person blows the whistle on malfeasance, they are effectively arrested and judged. Not formally, but certainly implicitly. Whistleblowers are judged by the perpetrators of the malfeasance, they are judged by the bystanders, they are judged by those with no duty or interest in the problem, and they are judged by themselves. Their trial begins when they blow the whistle, and their bewilderment parallels the bewilderment of K. The question of *Why* recurs for a whistleblower just as it does for K. *Why* are allegations never fully investigated, *Why* are the laws or codes not applied, *Why* are the bystanders not supportive and *Why* is there never an independent investigation? *Why* though is the whistleblower always remembered, but not always the perpetrator? As for Josef K, the trial of the whistleblower is as much a trial within themselves as with an external party. And often, whistleblowers fail both trials.

The trials of K and the whistleblower are, of course, not exactly the same. The whistleblower has less uncertainty. The whistleblower at least knows why they have been arrested. They blew the whistle. The whistleblower's trial is usually longer than the trial of K, and is usually sequential. A whistleblower typically refers allegations to an internal point in an organisation, then externally, for example to an ombudsman, and finally to the justice system, parliament and the media. The whistleblower is not summarily executed. Rather, they suffer a slow debilitation consisting of employment detriment, employment loss, relationship dissolution, and loss of self-worth. Survival for the whistleblower is not about surviving the stabbing of two "old ham actors" in a quarry, and dying "like a dog" as for K. Rather, survival for the whistleblower is more akin to surviving a cancer.

Notwithstanding these differences, the trials of K and of the whistleblower are underscored by many common characteristics. Like K, the whistleblower pursues truth when truth is not always required, like K, the whistleblower is exposed to the same arbitrariness of the law, and like K the whistleblower harbours a sentiment, expressed in *The Trial's* final line "*It was as if the shame of it should outlive him.*" All whistleblowers hope that the shame will outlive them.

K and the whistleblower experience a sense of inversion. Inversion occurs at all levels. The usually exemplary employee becomes a pariah, innocence becomes self-guilt, the insider becomes the outsider, the bystander becomes a betrayer and the erstwhile healthy organisation becomes cancerous. In testifying before the Senate Select Committee on Public Interest Whistleblowing in January 1994, I summarised my own sense of inversion as a whistleblower

"The exercise of whistleblowing is really akin to removing a cancer, typically a cancer that is growing in a public institution. The whistleblower identifies the cancer, attempts to remove it, and then is attacked by it. The whistleblower is characterised variously as a troublemaker, a zealot, a crusader, a pursuer of trivia, and those are the most acceptable designations. There are many observers of the harassment, but virtually no preventers. The whistleblower must at all times behave honourably; the cancer can behave as it likes, it has all the power. The whistleblower, however, must be ethical, rational and not excessive. Unsurprisingly, whistleblowing is not usually successful."

Josef K is the ancestor of the modern whistleblower. In Part I of this paper, the problem of inversion is explored and in Part II, the problem of the bystander. The convergence of Kafka and whistleblowing is particularly appropriate when we consider Kafka's personal writings. In 1922, two years prior to his death, he wrote to a friend about the anxiety he felt about his literary ability. *"Anxiety about subject matter is really neither more or less than life itself coming to a halt. People don't usually suffocate for lack of air, but for lack of lung power."* (Stern 1977, p. 9). Like canaries in the coalmine, many whistleblowers suffocate for both lack of air and lack of lung power. (Thanks to Jean Lennane for this analogy.)

The story of whistleblowing is often a story of unrealised expectations and the adjustment to those unrealised expectations. A whistleblower typically receives a series of negative judgements, and with each disappointment, a new set of expectations is formed. Thus whistleblowing is sequential process of expectations, judgement, disappointment and new expectations. The whistleblower is always seeking the High Court similarly to Josef K who asked the question just before his execution: " *Where was the High Court he had never reached?"*

Unsurprisingly, many whistleblowing cases are very long lasting, as whistleblowers converge towards their "*High Court"*. Bill Toomer blew the whistle on problems in the West Australian quarantine service in 1973. Mehmed Skrijel blew the whistle on drug trafficking in 1978. Both continue with their struggle for justice in 2002. When referring to another case, a Deputy Commissioner of Police once commented to me that a person would not continue their search for justice unless there was a core of truth in their original assertions. I agree.

Without prior knowledge of what happens to whistleblowers, a person would blow the whistle with at least three expectations. First, that the truth (or falsity) of their assertions would be fully investigated. Secondly, that any inquiry into their assertions would follow due process, that is to be independent and independently verifiable and to be based on principles of common law. Thirdly, that they would suffer no retribution, unless their assertions were false. That is the ideal world which whistleblowers often expect, and it is the world that I expected when I first blew the whistle in 1992.

I have been a whistleblower twice in Australian universities. The two cases are best summarised in my submission to the 2001 *Senate Inquiry Into Higher Education* (Submission 91). In the first case, I and 15 colleagues called for an audit into an academic department, and in addition eight colleagues joined me in submitting an academic complaint against a Professorial colleague. I expected the internal audit to find a number of financial anomalies. It did not. I then referred matters to the Auditor-General and within days the internal audit found that there were indeed some anomalies, but rather minor. My principal concerns relating to the disbursement of large research funds were never addressed, not by the internal auditor, the Auditor-General, nor the two Senate inquiries into *Public Interest Whistleblowing.* The expectation that my assertions would be fully investigated, was never fulfilled.

In relation to the academic complaint, I had similar expectations that the truth (or falsity) of the complaint would be fully investigated. Instead, despite advice from the University solicitor that a prima facie case existed, the complaint was dismissed by the Vice-Chancellor. I and the other complainants were then charged with serious misconduct for disobeying an instruction of the Vice-Chancellor to reveal the names of persons to whom we had communicated the allegations. We appealed to the Governor of Victoria, who appointed the Chief Justice of Victoria to hear the matter. The Chief Justice determined that we had no basis for appeal, because the University had not passed statutes enabling staff to be members of the University. I appealed again to the Governor to hear the substance of the complaint directly. He rejected my appeal.

The matter of the academic complaint was submitted to the two Senate inquiries into *Public Interest Whistleblowing,* and to the 2001 *Senate Inquiry Into Higher Education.* The second whistleblowing committee which reported in 1995 concluded by supporting my request that an independent consultant look at the matters I had raised, and suggest regulatory changes to the education system so that these events could not reoccur. The recommendation was never carried out.

In my testimony to the *Senate Inquiry Into Higher Education,* I attempted to have the academic complaint finally resolved, and to have the colleagues who supported me fully exonerated. In my testimony, I showed, through the tabling of affidavits, that the Vice-Chancellor who judged the complaint had not consulted those individuals who could have shown the complaint to be true, namely an Editor, a referee, and the complainants themselves. The details of my testimony were put to the Vice-Chancellor's successor who appeared before the same committee. She indicated that *"I would like to take that question on notice, and we will respond in full."* She never did. I wrote to the Senate Committee to request a response. I did not receive a reply.

The expectation that my assertions would be properly investigated, and that due process would be followed were inverted within a few years of the assertions being made. It was the decision of the Chief Justice which caused the most significant change in my expectations. Just as Josef K was never required to attend the court in person, so I was never given the opportunity to face the Chief Justice. Instead, the court proceeded in a virtual reality, in a domain of correspondence between lawyers and judges. I was the person on trial, yet I was not able to make direct representations and the decision against me was based on a

technicality which was itself an infraction of my right of appeal.

A whistleblower often confronts this virtual reality, and it causes an inversion within. Most whistleblowers have a particularly strong adherence to the rule of law, to the importance of statutes and codes and to the principle of independence and due process. This adherence to the rule of law often explains their path. For a whistleblower, the malfeasance that they first confront is bad, but the virtual reality that they subsequently face is infinitely worse. It was the decision of the Chief Justice which changed my path. I realised that I had become a *person of no importance* and that was reflected in the decisions against me, in the failure to implement recommendations of Senate Committees and in the non-response to my letters. Josef K reaches a similar point when discussing his plight with the priest. He asserts (*The Trial*, p.236)

'But I'm not guilty,' said K It's a mistake. How can a person be guilty at all? Surely we are all human beings here, one like the other.'

'That is right,' said the priest, 'but that is the way the guilty are wont to talk'

'Are even you prejudiced against me?' K asked.

'No, I'm not prejudiced against you,' said the priest.

'I'm grateful to you,' K said. 'But everybody else who is concerned in these proceedings is prejudiced against me. They make even those who aren't involved prejudiced against me. My position is getting more difficult all the time.'

'You are failing to understand the facts of the case,' the priest said. 'The verdict does not come all at once, the proceedings gradually merge into the verdict.'

And so it is for the whistleblower. The proceedings as exemplified by their arbitrariness, by the failure to implement recommendations, and by the non-responses of individuals, gradually become the verdict.

Update from NSW

Forced medical retirements J Lennane, G Crewdson and C Kardell met with Health Department officials late last year for a presentation in relation to the implementation of recommendations arising out of the "Lowe" Report and governance issues and options as identified by independent consultant Ms Cotton.

We were treated to a 'powerpoint' presentation (you know, pretty slides etc. on computer). Interruptions appeared to be unwelcome, as it disturbed the flow … but they got used to it.

It is fair to say that some changes have been made and to good effect. However the Government is sending mixed signals. On the one hand they appear to favour the most expensive governance option while at the same time reducing the recurrent funding.

However, one thing does remain the same. They were definitely not willing to look at addressing the concerns of those whose complaints gave rise to their decision to spend big money in getting it right for the future. Have we, or have we not, heard this before? We will press on.

Encouraging public interest disclosures The NSW Government. has produced a (4) page brochure entitled "Thinking About Blowing the Whistle" for circulation in the public sector organisations.

We were asked to provide input: which we did. Our suggestions were geared towards making the public interest uppermost, along with providing accurate information about how the Protected Disclosures Act does not protect you etc. Unfortunately the finished product makes whistleblower compliance the focus and management control the objective, at the expense of the public interest.

Curiously, it does appear to make the prosecution of offenders under the Act a police matter. This might make for interesting times as the police struggle to come to terms with an increasing demand for their services.

Even more interesting is the fact that the NSW Police Service is prosecuting one of its officers for detrimental action down at Wagga Wagga. This will be only the second prosecution under the Act in six years. (Check the Ombudsman's website for a copy.)

The workplace is no place for bullying The ACTU now provides a helpline for the 'bullied' on 1300 362 223, to make union workplaces safer places. It is working with the NSW Law Society to develop legislative guidelines for inclusion in our laws.

Parliamentary Review of ICAC The Committee is considering submissions (ours included) into how the ICAC conducts its inquiries and the benefits or otherwise of an inquisitorial over an adversarial system of inquiry. (Don't hold your breath)

Good press for whistleblowing An anonymous whistleblower's allegations were sufficient to suggest that fines up to A$10m could be imposed on a large company. The ACCC took the unusual step of running half-page advertisements in the daily papers, asking the whistleblower to get in touch. When interviewed on television Commissioner Alan Fels was reported as saying that most of their inquiries arose out of whistleblower disclosures. (Good one!)

Police Integrity Commission Inquiry (ongoing) Police Commissioner Ryan is alleged to have sabotaged the reform process but, as his evidence unfolds, staunch observers report that senior police appear to have been more interested in easing themselves up the greasy pole than anything else. Competence has given way to backbiting and bitchiness, with tawdry self interest once again revealing itself as the main game.

Federal whistleblower protection The Democrats have put a bill entitled "The Public Interest Disclosure Bill 2001" before the Upper House. It draws heavily on the ACT Act of the same name and is a step forward for the fact that it too, incorporates a civil claim for compensation for injury and/or loss arising out of detrimental action. (Check it out with Senator Andrew Murray or go to www.democrats.org.au)

Cynthia Kardell, NSW President

Letters

National Gallery comment

The January 2002 edition [of *The Whistle*] carried a reprint of an article by Jennifer Sexton of T*he Australian*, of issue 28 September 2001, concerning the National Gallery and employee Brian Cropp who alleged that OH&S regulations had been breached by the use of hydrogen peroxide to clean an air conditioning system.

I telephoned Jennifer Sexton to ask about this, and her reply was simply that she reported what was told to her, and had no understanding of the technical side of the matter.

Hydrogen peroxide is a potent oxidiser, the products of which when applied to a reactive material are free oxygen molecules and water. It is a potent antibacterial/antimicrobial agent, and as such is much used as a bacteriostat and general disinfecting agent. Also it is preferred to chlorine bleach in paper processing, because of its benign action and by-products.

I fail to see what if any deleterious effect to human life or indeed aft works, would occur due to its use.

In consequence I suggest that the claims of the employee are incorrect, and are due either to ignorance or a base motive.

Bob Kemnitz
Solar & Energy Management Engineering
14 March 2002

[See related items on pages 4 and 5.]

Proposal for a generalised procedure

This proposal is based on my knowledge of a number of whistleblower cases in universities. I would appreciate feedback on it. In particular, I would like to get opinions from people with experience in other areas. How useful do they think it would be?

The general difficulty in whistleblower cases is that, by definition, the whistleblower is up against people with more authority. Often those other people also start with more credibility. But it would be wrong to set up a procedure with the opposite bias, a bias in favour of the whistleblower. All sorts of ratbags would quickly discover the advantages of claiming whistleblower status.

My proposal is that the whistleblower and the authorities should each nominate three members to a fact-finding panel. The panel's first task would be to agree on a neutral chairperson. It is of course sometimes difficult to find anybody genuinely neutral, but I don't think this is critical, because the main purpose of the panel would not be to reach a majority decision. It would be to find the facts. In the cases with which I am familiar, the fair outcome is clear once the facts are established.

Am I taking a simplistic view of "the facts"? No doubt I am. I was brought up with a modern rather than a postmodern mindset. But if the panel were to produce two different sets of "the facts," most whistleblowers would, I think, be well satisfied.

I believe universities would not find it difficult to agree in advance to the general procedure I have outlined. It would be in their interests to do so, because the alternatives often become much more cumbersome or expensive.

What do others think?

Fred Jevons
f.jevons@hps.unimelb.edu.au

Whistleblowers Australia Internet forum

All financial members of Whistleblowers Australia are entitled to be subscribed to our internet forum.

This is an opportunity for you to communicate with other Australian Whistleblowers on an email forum which has restricted membership and only able to be accessed by WBA members.

If you wish to be subscribed, please email the Treasurer, Feliks Perera, feliksperera@yahoo.com who will then pass this request onto the moderator of the forum, to enable your subscription to be enacted.

Beyond Bullying Association

Lorraine Blaney writes to recommend the publications of the Beyond Bullying Association. They include four books about bullying and strategies for dealing with it.

Contact the association at PO Box 196, Nathan Qld 4111, web http://cwpp.slq.qld.gov.au/bba/

Whistleblowers Australia contacts

New South Wales
"Caring & Sharing" meetings We listen to your story, provide feedback and possibly guidance for your next few steps. Held every Tuesday night 7:30 p.m., Presbyterian Church Hall, 7-A Campbell St., Balmain 2041.
General meetings held in the Church Hall on the first Sunday in the month commencing at 1:30 p.m. (or come at 12:30 p.m. for lunch and discussion). The July general meeting is the AGM.
Contacts: Cynthia Kardell, phone/fax 02 9484 6895, or messages phone 02 9810 9468; fax 02 9555 6268.
Website: http://www.whistleblowers.org.au/
Goulburn: Rob Cumming, 0428 483 155.
Wollongong: Brian Martin, 02 4221 3763. *Website:* http://www.uow.edu.au/arts/sts/bmartin/dissent/

Canberra contact: Peter Bennett, phone 02 6254 1850, fax 02 6254 3755, email customs_officers@iprimus.com.au

Queensland contacts: Feliks Perera, phone/fax 07 5448 8218. Also Whistleblowers Action Group contact: Greg McMahon, 07 3378 7232 (a/h).

South Australian contacts: Matilda Bawden, 08 8258 8744 (a/h); John Pezy, 08 8337 8912

Tasmanian contact: Isla MacGregor, islamacg@southcom.com

Victorian contacts: Anthony Quinn 03 9741 7044 or 0408 592 163; Christina Schwerin 03 5144 3007; Mervin Vogt, 03-9786 5308.

Western Australian contacts: Avon Lovell, 08 9242 3999 (b/h); John White, 08 9382 1919 (a/h).

From the editor

In the previous issue, the most important news item was the government's proposed antiterrorist legislation that would have further criminalised whistleblowing. Partly because journalists were also targeted in the legislation, this generated a lot of critical attention and the legislation is being modified. Even so, the very fact that it was proposed shows the intense hostility of many in the government to whistleblowing.

Many individuals kindly sent along relevant items from the media, indeed far too many to include. Thanks to all.

Send all articles, letters and other items of interest to me at bmartin@uow.edu.au (the best option for me) or PO Box U129, Wollongong NSW 2500. You can ring me at 02-4221 3763 or 02-4228 7860.
Brian Martin, editor

Associate editors:
- Don Eldridge
- Isla MacGregor
- Kim Sawyer

Whistleblowers Australia membership

Membership of WBA involves an annual fee of $25, payable to Whistleblowers Australia. Membership includes an annual subscription to *The Whistle*, and members receive discounts to seminars, invitations to briefings/discussion groups, plus input into policy and submissions.
If you want to subscribe to *The Whistle* but not join WBA, then the annual subscription fee is $25.

Send memberships and subscriptions to Feliks Perera, National Treasurer, 1/5 Wayne Ave, Marcoola Qld 4564. Phone/Fax 07 5448 8218.

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