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

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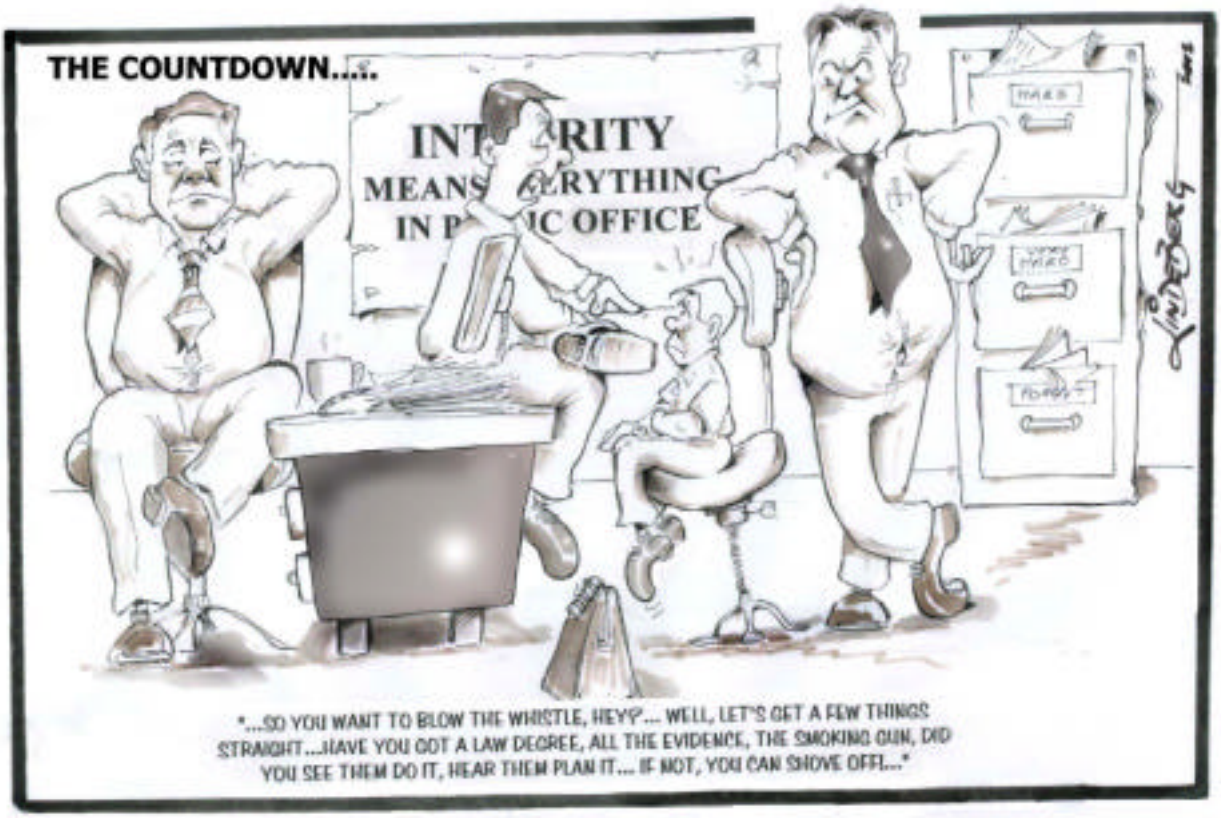

Media watch

Whistleblower died after police bashing claim

Malcolm Brown, *Sydney Morning Herald*, 4 November 2002, p. 5

A former Australian Protective Services whistleblower who died in his flat — soon after complaining of being beaten up by police — believed that senior Federal Government officials were afraid of him "because of what I know and have exposed".

A coroner's inquest has been ordered into the recent death of Gary Lee-Rogers, who claimed to have been persecuted after complaining about an APS superior officer.

Mr Lee-Rogers was found dead in his Queanbeyan flat on October 1. An initial medical examination indicated he might have died of a ruptured ulcer. On September 26 this year, Mr Lee-Rogers had returned to his Charles Street home and told his landlady he had been beaten up. The landlady said it was apparent he had been injured. According to Mr Lee-Rogers' former de facto wife, Kathleen Mills, he had told his landlady that he had been assaulted by federal police. Ms Mills said the landlady was afraid to disclose the information.

On April 4, 2000, after making a complaint about being persecuted, federal police had charged Lee-Rogers with a series of criminal offences, including two counts of unlawful removal, 11 counts of utter and another of fraud.

Mr Lee-Rogers maintained the charges were false and had been delivered as "payback". In October last year, in a statement intended for the media and obtained by the *Herald*, Mr Lee-Rogers had said he was worn out by harassment. "I have no money (bankrupted) … I am ill, my personal life has been destroyed, doors slam in my face and I've found the Government will not help. I believe it's crucial I continue to speak out and describe what happens to officers like me when exposing large-scale corruption within the APS."

In August/September 1999, he had written a "detailed and extensive report" on what he saw as weaknesses within the operations of the APS. The report had been received "enthusiastically" by the APS hierarchy but he had then run into conflict with some individuals in the organisation.

In November 1999, he had reported an alleged assault within the APS and in January 2000 offered further information on irregularities. But he had then been subjected to a campaign of "blatant slander" and rumour-mongering, directed also against an officer who had backed him up. Shortly after Mr Lee-Rogers' death, NSW Police started an inquiry. Pathologists have been engaged from Victoria and toxicology tests assigned to the Australian Capital Territory.

The Queanbeyan coroner, Peter Leonarduzzi, has indicated the pathology results will be ready in two to three months. A lawyer for Mr Lee-Rogers' family, Dominic Velcic, says the delay is unacceptable given the assault allegation. "I also asked the coroner about the toxicology tests being done in the ACT when the allegations might involve the Australian Federal Police," he said. "I said, 'Don't you think it is a little inappropriate?'"

Michael Kennedy, a former officer and now an academic with the University of Western Sydney, told the *Herald* he had given advice: to Mr Lee-Rogers. "The APS told him that if he did not shut up, there would be more charges," Mr Kennedy said.

An APS spokesperson said: "It would be inappropriate for us to make comment because it is a matter for the NSW Police and the coroner."

Dobbin' no longer lower than a snake's duodenum

Not telling on your mate was once a shorthand definition of an Australian. Not any more, writes ***John Huxley****.*

Sydney Morning Herald, 9 December 2002, p. 11.

AUSTRALIA: a dobber's paradise. A decade or so ago, it would have been unthinkable, positively unAustralian. But now ordinary members of the public are bombarded with offers to turn informant against fellow citizens.

Doing drugs or dodging taxes. Driving a smelly old banger or dole-bludging. Failing to fence off a backyard swimming pool or forcing up petrol prices. Littering the bush or, especially now, wasting water or dropping lighted cigarette butts.

Whatever the supposed "crime", there's almost certain to be a hotline somewhere waiting for an informant's call, a tip-off, a dob-in.

Some even offer sizeable rewards. Dobbing in an insurance fraudster could be worth $25,000. Providing evidence of computer software piracy could earn you $5000. And Manly Council is one of several in the Sydney area offering cash for information leading to the arrest of tree vandals.

So, is it possible to be both a fair dinkum Aussie and serial dobber? "I'm afraid not," says Sue Butler, publisher of the *Macquarie Dictionary* and acute observer of changing customs and linguistic practices. "Although increasingly Australians are wrestling with the issue to decide when and where dobbing is permitted." As Butler explains, "to dob someone" probably comes from 19th century British dialect meaning, more physically, to "knock them over" or "put them down", though it did not enter the Australian vocabulary until the mid-1950s.

Australians' aversion to "dobbers" probably springs from their convict history. "However unappealing the activities of others might be, you stuck by your class and never turned 'one of us' over to 'one of then'," she writes in *The Dinkum Dictionary.*

Despite the proliferation of hotlines Butler believes it is still not the done thing to dob in classmates, fellow workers or even neighbours.

"It's partly a matter of distance. We can write down the rego number of an unknown driver who throws rubbish out of his window, dob him in and feel virtuous. It becomes more difficult with anyone we are close to.

"People won't dob in their workmates to management. And I'm sure the no-dobbing rule still applies in the playground," Ms Butler says.

But it has also become a matter of degree. "Australians are now more

able to convince themselves that dobbing is OK if an overriding issue of public interest is involved." […]

The majority of dob-in schemes have been adjudged a big success. Police say their three major Crime-stopper campaigns — Operation Noah (drugs), Operation Paradox (child abuse) and Operation Dob in a Thief — have been highly effective. "The public response has been excellent."

During the first year of its "dob-in a tax cheat" campaign, the Australian Tax Office received more than 40,000 calls, of which 23,000 warranted further investigation. Some $44 million in additional revenue was raised.

Similarly, the Environment Protection Authority praises the response of callers to its information and pollution reporting service. […]

Not all dob-in schemes have worked, though. Blacktown City Council's "Dob-in a dumper", for example, was abandoned after only one person successfully claimed the $300 reward in two years. "A lot of people were afraid of retribution if they reported someone," the mayor lamented. "They'd say, 'I've done my civic duty, now you go and catch them'." Most informants, the council discovered, wished to remain anonymous and were unwilling to provide evidence in court.

As most authorities discover, even new-age dobbers, it seems, will go only so far in performing their civic duty.

Limits of a whistle-blower culture

Post Enron, tattletale stigma fade, but risks still outweigh rewards

By Jennifer LeClaire, *Christian Science Monitor,* 21 October 2002

Who likes a tattletale?

Sherron Watkins, an Enron vice president, was named *Time* magazine's "person of the week" in January after investigators seized her memo warning then-chief executive Kenneth Lay about suspicious irregularities in her firm's financial records.

But not all whistle-blowers are applauded, say experts. More are like Shannon Doyle.

Mr. Doyle was "blacklisted" by Hydro Nuclear Services, a division of Westinghouse Electric. Just last month he asked the Supreme Court to overturn enforcement of a waiver he signed in which he agreed not to file a claim against his former employers. He says they provided bad references in retaliation for his blowing the whistle on plant safety back in the late 1980s. […]

"Karen Silkwood and Sherron Watkins were heralded for doing a great service," says Steven Kohn, attorney and board chairman of the National Whistleblower Center (NWC) in Washington, D.C., a nonprofit advocacy organization that supports employee whistle-blowers. "But it's hard to find a job after that, because nobody wants to hire a whistle-blower."

Many firms apparently don't want to *retain* whistle-blowers, either. More than half of workers who flagged incidents of unlawful conduct in 2002 were fired, according to a NWC study in September. Many others said they faced unfair discipline.

But perceptions are slowly shifting, according to some experts. Employee watchdogs are getting more positive attention than ever in the wake of corporate scandals.

And last summer the federal government passed legislation mandating internal programs that encourage employees to cry foul, and require firms to provide protections against retaliation. All publicly traded companies were immediately required to set up committees to address concerns, and attorneys can be disbarred for helping clients cover up misconduct.

A recent study by Ipsos Reid, for Ernst & Young, cited 43 percent of employees surveyed reported fraudulent activities by co-workers during a recent 12-month period, mostly related to stealing office items.

Reports are on the rise in today's climate, but more are related to petty theft or discrimination, says Mr. Kohn, noting that only a handful of infractions have been reported each year in the 25-year history of environmental laws.

Experts say most employees are unlikely to speak out about more serious acts until corporate culture balances the risks with rewards.

Some Fortune 500 companies, such as State Farm insurance, Southern Company (an electric-and-gas utility firm), and Xcel Energy, actively encourage employees to come forward with information about unlawful actions.

Bentina Chisolm, attorney and manager of workplace ethics at Southern Company's Georgia Power, says posters, newsletters, wallet cards, and coffee cups urge employees to report employee misconduct.

The company offers multiple channels through which employees can anonymously lodge "concerns," including a third-party 800 number.

But Ms. Chisolm says the promotions and options don't seem to be enough. "Many employees are [still] concerned about how blowing the whistle is going to affect their careers," she says. "That is the overriding factor that keeps people from coming forth."

Fear of retaliation from co-workers is another barrier, say experts, including more subtle forms of payback, such as being ostracized. "The worst thing you can be accused of these days is not being a team player," says James Fisher, head of St. Louis University's Emerson Center for Business Ethics.

With so many negative repercussions associated with reporting unethical behavior, experts say it is unlikely that internal whistle-blower programs will expand quickly beyond complaints based on race, age, or sex discrimination, say experts.

Sharie Brown, a partner at Foley & Lardner, a Washington law firm, says companies have to remove the negative stigma attached to whistle-blowers by openly recognizing and rewarding employee watchdogs.

"There should be a special bonus for those who help the company avoid problems or minimize losses, in terms of financial issues," she says.

But some workplace experts worry that firms could become bogged down in a boom of costly, dead-end investigations.

"Corporations, scared by the headlines, are sacrificing good judgment and common sense and treating [everyone] that comes out of the woodwork as a potential 'insider'," says Pat Gillette, cochair of Heller Ehrman's Labor & Employment National Practice Group based in San Francisco. […]

The ethics of whistleblowing

Peter Bowden
(Peter Bowden, an academic turned consultant, previously was Professor of Administrative Studies at the University of Manchester and lecturer on the MBA program at Monash University.)

A recent conference sponsored by a well-known international auditing company was titled "Whistleblowing: Betrayal or Public Duty?" The title portrays the near-schizophrenic attitude that we have towards the public exposure of an illegal or immoral action by the organisations with which we work. Although whistleblowing is, by definition, exposing dishonesty, many people find it distasteful, even unethical. A former president of General Motors has described it as "eroding… the loyalty of the management team, with its unifying values and cooperative work." A high proportion of senior executives takes a similar attitude. Many academic ethicists agree with them.

Recent months have seen the WorldCom and Enron collapses, the accusations against Arthur Andersen, the publication by Merrill Lynch of misleading information of benefit to Merrill Lynch but not to its clients. Ralph Nader tells us that there are thousands who could have exposed these practices, from boards of directors to the people in the back rooms who processed the paperwork. Nobody did.

In Australia, we have seen HIH and FAI, One.Tel, and the destruction of evidence in the tobacco company cases. Within the public sector there has been the refugee children overboard episode, where none of us has been certain that our politicians, our senior civil servants or our military personnel were telling the complete truth. Again, in no case did anyone reveal what had actually happened prior to the official inquiries.

Most of us vigorously condemn dishonest and unethical conduct on the part of our public and private organisations. But it would appear that few of us are willing to blow the whistle. Many even condemn those who do. The records of whistleblower support groups contain innumerable stories of the sometimes vicious treatment of those who expose organisational dishonesty. We act towards the whistleblower with the same unpleasantness with which a tribe of chimpanzees defends its territory against an outsider.

It is an important ethical issue, one on which we need to search for answers. The following paragraphs examine the ethics of whistleblowing in an attempt to determine our moral obligations when we come across wrongdoing in the organisations that employ us.

To make these judgements we can only use the ethical beliefs that have come to us over the centuries — the beliefs of the world's great moral and ethical thinkers — to assess whether an action can be considered ethical or not.

There are perhaps five ethical beliefs considered mainstream:

1. **Deontological or duty commands,** proposed primarily by Immanuel Kant, sound somewhat like the Ten Commandments: Thou shalt not lie, steal, kill, etc. Kant added two propositions through which we identify our duty. One, the Categorical Imperative, states that we should decide on the best course action as if it were to become a universal law. The second is to treat other people as an end, never as a means.
2. **Utilitarianism** — choosing the path that does the greatest good for the greatest number — was first suggested by Jeremy Bentham but most eloquently argued by John Stuart Mill in the 1850s. Termed consequentialism today, it is the dominant ethical theory.
3. **Virtue theory** was first argued by Plato and Aristotle, but expanded over the centuries. There is, unfortunately, no agreed list of virtues. Some ethicists argue for Aristotle's ten virtues, only a few of which, however, are concerned with right versus wrong. The modern equivalent is possibly Steven Covey's *Seven Habits for Highly Effective People.*
4. **Do no-harm theories:** where conflicting choices arise, adopt the choice that causes minimum harm. Originating with Confucius' precept — "What is hateful to you, do not do to your neighbour" (*Analects, 15-24)* — no-harm to others is a rule that has near-universal applicability. What is most hateful to us is for others to directly cause us harm, or to damage the institutions and communities with which we live. Although not strongly supported by academic ethicists, 'minimum-harm' does, in most cases, reach the same ethical conclusion as utilitarianism, although overcoming the problems caused by some utilitarian responses.
5. **Our rights** started perhaps with John Locke's statement that our life, health, liberty and possessions are inalienable rights. Since expanded to the thirty articles of the UN Declaration of Human Rights, these rights do establish guidelines for our behaviour in many whistleblowing situations.

These ethical beliefs have to be weighed against the arguments that condemn whistleblowing. They would fall into four major groups:

1. Whistleblowing contravenes the loyalty that we owe to the organisation employing us. The public release of information that we secretly gathered from the organisation is not only disloyal but is, in fact, theft.
2. Whistleblowing is sneaky and underhand, for we are informing on friends or colleagues in the organisation, often in a way that will be detrimental to them.
3. Some whistleblowers are themselves unethical, such as crooked cops who roll over to protect themselves, or someone who exposes whatever dirt they have on an organisation in revenge for some real or imagined slight.
4. Whistleblowing can create a negative impact that outweighs any benefits. Such cases arise

when the whistleblowing causes the closure or even collapse of the organisation, with the loss of many jobs. A similar argument arises when the damage to the whistleblower outweighs any good he or she can do, as in the instance of a whistleblower with family obligations who is fired.

1. Whistleblowing is contravening our duty of loyalty to our employer.

This first group of arguments against whistleblowing states that we owe a duty to the organisation that employs us — to support it, not to steal from it, for instance. This duty is endorsed only by Kant and his followers. Many well-known ethical philosophers disagree. Lying is their simplest example — 'thou shalt not lie' is a Kantian duty. Nevertheless, we tell many white lies, primarily not to offend people. There is also the more serious lie that ensures that no harm is done — denial to a military search party of where innocent people are hidden (a Palestinian or Jewish family, for instance). Stealing is another example. Was it wrong for French resistance groups to steal explosives from German munitions dumps?

In short, a case can be made that the ethical duty required of us can be ignored if a higher but opposing duty demands compliance. In fact, all ethical systems, except the duty argument, will advocate the higher, overriding considerations.

It can be readily argued, therefore, that the harm arising from dishonest organisations outweighs any consideration of duty or loyalty to those organisations. The surge in corporate wrongdoing in recent months, for instance, has caused the closure of many companies and a consequent loss in jobs. These consequences are widely regarded as a contributing cause to the subsequent economic downturn — a downturn that has caused widespread losses in people's retirement savings, still further closures and job losses. There can be little doubt that the early surfacing of a whistleblower would have prevented much subsequent harm.

A related set of arguments applies to government. Public servants sign a commitment to uphold and implement the policies of the government of the day. This commitment underpins our democratic system. But what are the ethical obligations on a public servant if the government is lying, as it was during the children overboard affair? Most of us felt annoyance and disgust when we realised that not only were government ministers lying, but that a number of public servants and military personnel were also lying about this issue. Once again, an ethical argument based on our right to full information would state that public servants have an obligation that overrides their commitment to the politicians of the day.

A caution is needed. The ethical justification for whistleblowing by public servants lies in clear evidence of unambiguous wrongdoing, as in corruption, lying to the nation, withholding information that an informed citizenry should possess, etc., namely acts that we would all agree were wrong and had harmful consequences. There are many instances in the assignment of budget funds, however, when we believe the government to be wrong. Many believe that the shortage of funding in education or health is damaging; others that prison reform, or increased legal aid, are vital in correcting harmful aspects of our society. Public servants working in these areas probably feel even more strongly than we do. Their information is needed to contribute to the public debate. Few would consider it as whistleblowing, however, for no government can meet every need. But once the matter has been publicly debated and clearly decided, it is the public servant's moral obligation to implement that decision as effectively as he or she can. The higher obligation of ensuring effective democracy, efficiently executed, must dominate.

2. Whistleblowing is adopting Gestapo tactics.

The second series of arguments against whistleblowing — that it is sneaky, underhand, that you are informing, ratting on your mates — reflects, some claim, a particularly Australian set of beliefs. "I'm not a dobber, never was and never will be" a recently retired customs officer stated in the discussions on an early draft of this paper. Others went further: "To tell us that we should whistleblow on our friends is to turn us into a Nazi informers."

It is a viewpoint that, although widely held, has no support from any of the ethical systems. In fact, none approve of theft or lying or deceiving the public. Not to try to prevent the wrongdoing when you have clear evidence is, in fact, condoning it, even making yourself an accomplice, and is clearly unethical.

3. A crooked cop who rolls over is whistleblowing and that is unethical.

The cop is of course trying to reduce the severity of his or her eventual punishment. Other examples, also regarded as doubtful by many people, are of a whistleblower who is seeking revenge on a (dishonest) boss who treated him or her badly. The only ethical belief that rejects these acts is again Kant, for one of Kant's basic propositions is that we should act for a sound moral reason, not out of self-interest. Most people would agree with him. But they would also agree that it is preferable to stop organisational dishonesty, regardless of the source for the information. Again, although not everyone will agree that a cop rolling over is whistleblowing, the act itself has to be endorsed as ethical even though the person and their reasons may not be.

4. Whistleblowing can cause more harm than good.

Another set of arguments against whistleblowing relates to the damage that it does to you or your colleagues, through the loss of your job, or of their jobs, and the fact that this damage may outweigh that done by a dishonest organisation.

Our own intuition tells us that society will benefit if we weed out dishonesty from companies and public organisations. Utilitarian and minimum harm ethics, however, require an assessment of the harmful consequences of the alternatives — blowing the whistle or of keeping quiet. It is not an easy task. Whistleblowing that impacts on an organisation at a level that would cause the company to fold and all in it to lose their jobs suggests that its continued operation would likely cause more damage than the job losses. Using Arthur Andersen as an example, most people would argue that the harm done by an unethical auditing company totally outweighs the loss in jobs

caused by the closing of Arthur Andersen offices after the Enron collapse. Many would extend this argument — eliminating dishonesty in our public organisations is worth the loss of any number of jobs.

Comparing the relative damage is simpler when only the whistleblower is likely to suffer– to lose his or her job, for instance, an outcome that is very common. Kant is quite clear — we know where our duty lies — to stop the dishonesty, even at our own expense. Most people would agree. What after all is the loss of one job compared with a dishonest corporation? The problem is, of course, that if you are the whistleblower, it could be your job.

There is the added complication that the whistleblower could not only lose his or her job, suffer the emotional damage of the rejection by the corporation and the unpleasantness from colleagues, yet still not correct the dishonesty in the organisation. If this were the likely outcome common sense would, despite the ethical imperatives, suggest that the whistleblower should keep quiet.

It will be a personal decision. Until people are sure that they will be successful in fixing a problem by blowing the whistle without damage to themselves, only the extremely ethical or the very brave will be willing expose organisational wrongdoing. The damage of course can be minimised by following the advice of the whistleblower support groups, including acting anonymously wherever possible (i.e. leaking). The answer also lies in improved legislative and administrative systems that ensure that the whistleblowers' information is heard, investigated and, if necessary, acted on. Australia, for the most part, has not yet adopted these systems. Until we clearly tip the balance in favour of ethical behaviour, we shall continue to have our FAI, One.Tel and HIH debacles, and nobody on the inside will try to stop them.

What you won't see on TV

Brian Martin

Chris Masters is an award-winning reporter on ABC's Four Corners television programme. He is best known for "The moonlight state," a documentary that exposed police corruption in Queensland and helped trigger the Fitzgerald royal commission. But he has many reasons to regret making that programme. It took three months of work to produce. Surviving the subsequent defamation actions took the equivalent of two years of full time work, spread over 13 years. Masters says the process nearly drove him mad.

Even though the ABC won the case, there were no real winners. Masters concludes, "The experience was awful for all of us. This is a common outcome of defamation trials." Masters has nothing good to say about Australian defamation laws. He says "From where I sit our defamation laws work for no one except perhaps some lawyers, some other opportunists and those who wish to stifle information."

These comments are included in Masters' new book *Not for Publication* (Sydney: ABC Books, 2002). In it, he tells about some of the stories that never reached the screen. His encounters and interviews include a gangster, a veteran who doesn't march on Anzac Day, corrupt lawyers, an unscrupulous war photographer, bikies and refugees, corrupt police and a fix-it man who subverts the democratic process, among others. Every story is fascinating. Why didn't Masters pursue them further? Various reasons: lack of evidence, complexities, pressure of other stories, or not enough entertainment value to gain an audience.

Masters doesn't tell the full story here, either. Far from it. In fact, not a single name is mentioned in the book. Furthermore, the details of the stories have been modified. This is all to avoid defamation suits. In telling about a corrupt corporation, Masters can't even reveal what industry it is in. He also has to worry about anything that would reveal his sources.

Despite the inevitable fuzziness that results from the attentions of the ABC lawyers, Masters' stories offer many insights about society — especially its shady sides, from gun-running to contemptible radio talk-back hosts — and about the role of the media in it. Readers will gain a feel for what is missing from television, including many things most people are unlikely to encounter in daily life.

Masters is not easy on journalists. He expects much more from them in tackling serious issues rather than just pursuing entertainment. He also has critical comments about audiences who lap up the drivel provided and who do not demand cutting-edge investigative reporting.

Whistleblowers who have sought but not obtained media coverage can find a few hints in the book. Masters is supportive of whistleblowers; indeed, he often desperately needs them to be able to run with a story. But the key is to find a *credible* whistleblower, and not everyone is credible. Some people lack credibility because they have an axe to grind or seek to use the media to pay back an enemy. Criminals often know about police corruption but have low credibility when speaking out about it. Masters also says that journalists avoid "bad talent," namely people who have great stories but lack the ability to communicate it.

Then there are pests: "Whistleblowers are obviously valuable allies to journalism, but they can also be bloody nuisances. They can sometimes have a way of seeing only what supports their view of themselves as innocent victims. They can be blind to the contribution they make to their own misfortune. Some of them refuse to leave you alone until they manage to engage you in their own suffering."

Most importantly, whistleblowers need to know that journalists cannot do a story on every case. In the case of television, many stories are investigated for every one that is broadcast. So by all means seek media coverage but don't rely on it. Chris Masters will do his best but some stories will always be *Not for Publication.*

The Mickelbergs and us

Anne McMenamin
(Comments in advance of a meeting in Adelaide, October 2002)

Who are the Mickelbergs?

In March 1983 the Mickelberg brothers — Ray, Brian and Peter — were convicted of swindling $650,000 worth of gold bullion from the Perth Mint the previous year. They swear they were framed and that they were convicted on the basis of fabricated evidence, including unsigned "confessions" and a forged fingerprint. They have fought six appeals, all unsuccessful.

Avon Lovell is an investigative journalist who wrote a book called *The Mickelberg Stitch* about the case and the trial, and a subsequent book called *Split Image*, about the forensic evidence and the appeals. For over ten years the police union prevented sales of the books by slapping defamation writs on any outlet that handled them, until finally they had to back down and pay Avon $250,000 damages.

Partly as a result of Lovell's work, the West Australian government set up a Royal Commission into police corruption, but carefully excluded the Mickelberg affair by setting the starting date at January 1985. (The Health Minister Bob Kucera is implicated in the affair as he was both present and the then Police Superintendent in charge of the regional office precisely when the Mickelbergs allegedly made their confessions. The relationship and loyalties between McGinty and Kucera gets more interesting when one realises that the daughter of one man is living with the son of the other.) However, Lovell dropped a bombshell in June this year, by obtaining an affidavit from Tony Lewandowski, the police officer second in charge of the case. The first in charge, Don Hancock, had been murdered about nine months earlier. In the affidavit Lewandowski confirmed everything the Mickelbergs had said, about beatings, fabricated "confessions" and fabricated evidence.

The affidavit was presented to the Director of Public Prosecutions (DPP) as part of a petition for another appeal. The DPP passed it on to the Solicitor-General, who passed it on the Attorney-General, Jim McGinty. Instead of sending it on the Court of Criminal Appeal, as is normal practice, McGinty first turned it over to Kucera for three days, and then made it public and referred it to the Royal Commission, saying that he would not allow an appeal until the affidavit had been tested in the Royal Commission. Lewandowski went to Thailand, for safety and anonymity.

The Commission then requested Lovell to give evidence and to hand over all of his documentation. When he declined, he was subpoenaed, and, when he still refused, he was arrested for contempt of court, and fined $30,000. In the middle of this, the Attorney-General turned the affidavit over to the Appeal Court, which is what Lovell had insisted should have been the process from the beginning. Many people believe that McGinty's handling of the affidavit up until that time had served to protect Kucera (and possibly others), and to discredit, intimidate and punish both Lovell and Lewandowski.

Lewandowski finally returned to Australia with a written guarantee of immunity from the DPP, and gave evidence to both the Royal Commission and the Court of Criminal Appeal. He was then immediately arrested, and is in jail with bale refused, making a mockery of the immunity, and ensuring that other potential witnesses will not come forward. Again, the Government's role does not seem to be aimed at getting the truth into the open.

The present position (October 2002) is:

- Tony Lewandowski is in jail;
- the appeal process is moving slowly;
- Avon Lovell still has $20,000 to pay — and the first $10,000 was borrowed;
- *The Mickelberg Stitch* has been reissued, and book launches held around Australia.

Ramifications of the Mickelberg saga

Whilst the Mickelberg saga has been a personal tragedy for the Mickelberg family, and, in some ways for Avon Lovell, it has much wider ramifications. Perhaps the best statement of this comes from a lead article in *The West Australian.* This has particular significance, as *The West Australian* has consistently waged a battle of vilification against Lovell.

Lovell story is far from over

Torrance Mendez
The West Australian,
17 August 2002

THE royal commission into police corruption has claimed its first scalp with author Avon Lovell, but in doing so has created a headache that will take more than morphine, money and the Mickelbergs to ease.

Lovell was fined $30,000 on Thursday for three counts of contempt — failing to attend the commission on July 15, refusing to testify and leaving without permission on July 17.

But is it fitting for Lovell — who has produced evidence of major police corruption with implications for the entire system of justice in WA — to be the commission's first victim? Lovell remains the person who extracted the admission of corruption from former detective Tony Lewandowski in support of claims that brothers Ray and Peter Mickelberg were convicted of the 1982 Perth Mint swindle on fabricated police evidence.

The ramifications of that for the administration of justice in WA are endless. Perhaps the most serious indictment is that Mr Lewandowski's confession contains little new material. It merely verifies the story told by the Mickelbergs from day one. And that story has been rejected by the Court of Criminal Appeal over two decades, even when backed by persuasive forensic evidence. [emphasis added]

This time, however, the perpetrator of wrongdoing is owning up. If Mr Lewandowski's admission is accepted, the WA public must be left wondering why successive appeal courts dismissed the strengthened Mickelberg case in favour of a weakened police line.

The obvious question is: Did the appeal court put too much weight on police testimony to the detriment of appellants? And is the appeal court functioning with the independence the public expects? If it is not, it is a worrisome headache for all WA authorities,

not just royal commissioner Geoffrey Kennedy QC.

Thus the Mickelberg saga raises questions not only of police corruption, but of corruption and incompetence in the judicial system, legal administration, the government, and the mainstream press. Its importance is underlined by the fact that this is not the only such case in WA in recent years.

Implications for South Australia

Revelations over the last twelve months suggest that the same questions need to be asked in South Australia. In fact, senior legal practitioners and researchers claim that the situation in WA pales in comparison with that in SA! In part, these claims relate to the role of Dr Manock, the former head of the government's Forensic Science unit. Independent research has called into question the validity of a number of Dr Manock's findings over a period of many years. This in turn raises questions about the competence and professionalism of some legal practitioners, the judicial system and the press.

Whistleblowing: The watchdog agencies

Kieran Pehm
Deputy Commissioner
Independent Commission Against Corruption, New South Wales

"Whistleblowers: Betrayal or Public Duty? Conference"
Transparency International Australia, Edmund Rice Centre for Business Ethics and KPMG Forensics
Sydney, 6 August 2002

[This is an abbreviated version of Keiran Pehm's talk, omitting sections on the costs and benefits of whistleblowing, what can be learned from the private sector, and fraud investigations. — *The editor.*]

For those of you unfamiliar with the ICAC's role in relation to whistleblowers, under the *Protected Disclosures Act* we can receive disclosures from New South Wales' public officials alleging corrupt conduct in the public sector. If it's about corruption in their own organisation, they have the option of internal reporting or coming to us. If it relates to another organisation, then to receive the protections of the Act, the disclosure must be made to the ICAC.

Protected disclosures received by the ICAC are then assessed and appropriate action taken. Files are given a distinctive coding to alert the case officer to the fact that it is a protected disclosure, and that certain specific obligations and timeframes need to be observed. Receipt and assessment will usually be carried out by our Assessments unit, which has been significantly revamped over the past eighteen months to place greater emphasis on responsiveness and timeliness.

Protected disclosures from whistleblowers in the New South Wales public sector make up about 10 percent of the matters we receive each year.

They constitute a potentially valuable source of information to agencies such as ours, given that they come from agency insiders. In 2000-2001, protected disclosures tended to relate to tendering and procurement, and staff matters, including recruitment, management, and treatment of staff. The allegations consisted of such matters as failure to observe proper processes, harassment and victimisation, and failure to act on allegations of wrongdoing. It will be apparent that these last two classes of complaints also relate very much to the process and consequences of whistleblowing.

While they represent a sizable number of the matters we receive, we know from feedback from whistleblowers, and other bodies, such as our Parliamentary Committee, that we can do better. Doing better means working with our peer agencies, and the rest of the public sector, to improve on a number of issues associated with protected disclosures.

For instance, we know we have a lot of work to do to improve even basic knowledge of protections for whistleblowers, let alone confidence and a sense of security.

Every few years, we do a survey of attitudes to corruption in the public sector. Our most recent one was done in 1999, and we compared the results to the earlier survey carried out in 1993. We were pleased to note that in 1999 employees were more likely to believe that it was worth reporting corruption because something would be done, and were more likely to report knowing where to go with their complaints.

One figure that was of concern was that 69% of survey respondents still agreed with the statement "People who report corruption are likely to suffer for it". While this was a small improvement on the 1993 results, where 75% held that view, it still indicates a long way to go in developing cultures within organisations that encourage rather than inhibit whistleblowing.

Part of the problem is that organisations are not always aware that there is a problem. In surveys we have done of local government, and the public sector as a whole, we see a dissonance between what organisations think and say they have done to promote protected disclosures, and staff awareness of these initiatives.

In one recent survey we conducted, you had 60% of large agencies and 42% of small agencies saying that they had implemented strategies to inform their staff about making Protected Disclosures, but only 23% of staff saying that their agencies had adequately educated staff about protected disclosures, with 37% saying not well enough, and 38 % saying not at all.

And ultimately you had only 47 percent of public sector staff in New South Wales saying that they were aware of the Protected Disclosures Act.

The picture was much the same at the local government level. When we surveyed local councils during 2000-2001, 99% of General Managers said that they were aware of the Protected Disclosures Act, and 91% of them said that they had internal reporting procedures in place. Yet only 44% of staff said that they were aware of the Act, and only half knew that there was an internal reporting procedure in place at their Council.

So awareness of the existing protections is obviously one area that we all need to work harder on. This issue has been taken up by the Protected Disclosures Act Implementation Steering Committee, of which the ICAC is a member. To raise awareness within the public sector, the Committee has prepared a series of brochures for state and local government on how to make a protected

disclosure. The brochure deals with some of the do's and don'ts of making a disclosure, and deals with some of the risks. Local and state government agencies have already requested over 35000 printed brochures to distribute among staff, and it's available through our website.

Yet I feel that awareness will only get us so far, and that there are deeper causes for the failure to make greater use of the *Protected Disclosures Act*.

There are two strands to what I believe ICAC can do to improve the climate for whistleblowing. First, is what we can do to improve the capacity of public sector agencies to better deal with internal complaints. Second, is what we can do to improve our own handling of protected disclosures from public sector employees.

Much of our work in recent years on protected disclosures generally has been about building the capacity of organisations to elicit and deal with internal reports. The Protected Disclosures Act Implementation Steering Committee has made capacity building a priority. Raising awareness of the *Protected Disclosures Act*, its requirements and its protections has been a significant stage in this process.

This needs to be supported by internal reporting systems in which staff can be confident that their disclosures will be treated seriously and in confidence. As I mentioned earlier, whistleblowers want to know that something will be done in response to their complaint, and that they will be protected from any possible reprisals. An internal reporting system that offers that assurance and makes every effort to act on those assurances will have more success than those that don't.

Ensuring that something will be done in response to internal complaints is obviously easier said than done. Part of the capacity building that has been taking place in recent years has been about equipping agencies with the ability to conduct internal investigations. By working with agencies on particular matters, and offering training and guidelines on internal investigations, we hope to provide agencies with the means to deal with internal problems properly, adequately and effectively. However, providing agencies with the means to properly investigate internal matters has to be accompanied by a commitment to treat them with proper and serious regard.

We do appreciate that one of the concerns of whistleblower groups is the tendency of organisations like ours to refer matters back to agencies for investigation. Referring matters to an agency to follow up reflects a philosophy that agencies should, in the main, be able to deal with their own problems subject to appropriate oversight and monitoring. Whistleblowers fear that such referrals will not result in any real action, and will leave them vulnerable to the risk of exposure.

I believe that we have not always handled such referrals well in the past, and that we can do better.

One thing we are doing at the moment with whistleblowers is to talk to them — at some length — before making any such referral, to go through the pros and cons about whether the should give their consent to referral.

Frontline staff and people dealing with protected disclosures are receiving regular training on issues associated with protected disclosures. And we are constantly reviewing our procedures for referring matters to ensure that risks to people making protected disclosures are addressed.

I also believe that we are more attentive to protected disclosures, and looking for opportunities to pursue appropriate protected disclosures, and complaints of reprisals, to ensure that these issues are addressed adequately by agencies.

Another change in our approach is to take greater care in the referral of protected disclosures back to the agency. If the whistleblower does not consent to the referral, they will only be made where it is clearly in the public interest and the whistleblower's interests can be protected.

Supporting whistleblowers

As I have said, one of the preconditions for whistleblowers making disclosures is that they feel safe from possible reprisals. I believe this is one area where oversight agencies can make a significant difference by highlighting, and appropriately responding to instances where whistleblowers have been harassed or victimised.

Recognising the pressures faced by whistleblowers is an important issue. An agency like NSW Police, where internal complaints are going to be significant in dealing with misconduct, has responded by establishing an Internal Witness Support Unit. While I think that's an appropriate response given the particular issues you've got in a policing environment, that type of support is not going to be appropriate for every organisation. Agencies should develop their own support mechanisms, catering to the needs of their particular organisation.

Whistleblowers are taking a risk — they can't ever be sure that their disclosures will not attract hostility or inaction — and no-one can guarantee that they won't. It is necessary to establish some ground rules or basic guidelines that will help whistleblowers to get through the experience. Whistleblower's groups, websites and books all provide useful guidance.

For whistleblowers, it is important to give consideration to what evidence there is to back up your allegations. As persuaded as you may be that something is amiss, it will be hard to take it any further without at least some evidence to back you up. There's good advice on some websites, particularly Brian Martin's, about keeping your head down as you go about collecting evidence. I hope we can convince Dr Martin by our future handling of protected disclosures that it is worth taking internal complaints to watchdog agencies.

Some whistleblowers make the mistake of not making their complaint until they are caught up in disciplinary action. This affects perceptions as to the bona fides of their complaint, and their motivation for making it.

In fact, it is necessary to appreciate that whistleblowers can be driven by a variety of motivations for making their disclosure, and that there will be occasions when blowing the whistle is a cloak to validate or vindicate their own conduct. An article in Forbes Magazine a few years ago put it neatly by saying that:

"whistleblowers are mere human beings like you and me, who go through life thinking deeply about what's best for number one … when you offer special job protection to whistleblowers, then any human being needing job protection will suddenly

have a huge incentive to blow a whistle if he can get his hands on one."

In spite of all the trials and tribulations faced by whistleblowers, or perhaps because of them, whistleblowing can attract a certain prestige, and sympathy from the media.

Last year the ICAC saw its own credibility and integrity under the gun from a self proclaimed whistleblower. We undertook an investigation into serious allegations that officers from the National Parks and Wildlife Service had been involved in a concerted effort to discredit and ruin the complainant, and that they had a contact in the ICAC to assist their efforts.

Following, a lengthy investigation, for which we had introduced a number of safeguards, including independent oversight and auditing and an independent computer forensics expert, it was established that the memo at the heart of the investigation was a fake, and had in fact been produced by the complainant himself. Despite a compelling case, built on facts and forensics, that also addressed the complainant's original grievances against NPWS, some whistleblowers remain convinced that the matter was not properly investigated.

It was a salutary lesson that, as in all investigations, the outcome needs to be decided by the facts and the evidence, and not by the desires and motivations of those involved, however highly principled.

It is important to appreciate that in creating a climate encouraging to whistleblowers, it cannot be left to oversight agencies alone, regardless of how important or central our role. There is an obligation on the management of agencies to support whistleblowers, and put in systems to assist disclosures. Ideally, this would be supplemented and reinforced by internal support people who are removed from any investigative and disciplinary proceedings.

Finally, there is value in looking at possible external supports — and here I am thinking not only of the peer support offered by organisations like Whistleblowers Australia, but at more structured formal supports, similar to employee counselling services offered by workplaces. Such services have the advantage of offering confidentiality and discretion away from the workplace, and if the example of Public Concern At Work in the UK is any indication, they can also provide an additional, effective voice for whistleblowers on a range of issues, such as legislative change and improving management practices.

Conclusion

We hope that organisations, both public and private, see it in their interest to establish early warning systems inside their organisations. And that the message that comes through these systems may not only save your organisation money and grief, but as we've seen from the corporate meltdowns of the past year, it may just well save your organisation.

The need for whistleblowers, and their value, has never been more apparent. Maybe this is an opportunity to create the culture in which they feel safe, and they feel that they're going to be listened to. Thank you.

ICAC and whistleblowers — an expensive and damaging failure

Jean Lennane

Keiran Pehm's attempts to make the ICAC sound good, or even OK, might convince some bureaucrats and the uninitiated. The facts, however, are otherwise. From the time it was established, 14 years ago, it has been a disaster for any whistleblower foolish or naive enough to trust Pehm-like rhetoric.

Whistleblowers Australia's view is not simply that you can't trust any of the bastards. Our experience with the other two major NSW bodies that also deal with the Protected Disclosures Act, the NSW Ombudsman and the Auditor-General, has been very different. Not that they are perfect, but they have seldom been actively damaging and in some cases they have produced a very satisfactory result.

Our view is also based on research: a consumer satisfaction survey done by us in 1995 and a similar one a year or so later done by ICAC itself, presumably in the hope of disproving our damning conclusions. A whistleblower within ICAC told us then that their results (also "quite damning") were being suppressed, and researchers pressured to change them. They were eventually published, but severely modified; and ICAC has apparently never dared to repeat such a survey, although it would be infinitely more valuable than the predictable and pedestrian studies quoted by Mr Pehm. He still focuses in his piece on the completely irrelevant issue of whistleblowers' motivation and personality, namely on the messenger rather than the message.

He mentions ICAC's potentially highly damaging practice of referring complaints back to the agency being complained about. At least they no longer do so without warning, but refusal to allow complaints to be referred back usually means ICAC will do nothing. Adopting this as a routine policy reinforces the fixed delusion that significant corruption can occur within an organisation without involving those at the top — a belief that has rendered useless ICAC's few efforts over the years, e.g. into State Rail.

We had hoped for some improvement under the latest Commissioner, Irene Moss, who indeed seems to have succeeded in making a hostile, dismissive and slow-moving bureaucracy a bit more responsive and user-friendly. However, such essentially cosmetic improvements have paled into insignificance in the light of their "Report on investigation into matters concerning John Kite and the National Parks and Wildlife Service, December 2001" (the case referred to by Mr Pehm, although not by name). The title itself says it all — what should have been an inquiry into the NPWS, with particular reference to the Threadbo disaster, became an inquiry into John Kite, the whistleblower who started the case, and an unfortunate NPWS staff member, too honest it seems for her own good, who was sucked into the mess.

Alerted by ICAC's initial advertisement for public submissions into the matter, whose format made it quite clear the investigation was going to be into Kite rather than his allegations, WBA took a close interest from the beginning, including visiting Mr Pehm to express our concerns. Interestingly, at that meeting he admitted to concerns at ICAC over the declining number of

complaints coming their way. We pointed out that the way the Kite matter was going, things would get worse, not better, as more whistleblowers recognised ICAC as a place where they can expect crucifixion rather than help. We pointed out that ICAC's abysmal failure ever to take action under the Protected Disclosures Act against bodies making reprisals against whistleblowers now seemed to be reinforced by what was shaping up as an extremely savage reprisal on someone blowing the whistle at least partly on them.

Alas, to no avail. The focus of the case was the "smoking gun memo" publicised by Channel 9's Sunday program, after experts from the US had told them that both the language and composition, and handwriting on the paper, indicated it had been written by the person whose signature appeared on it. How Kite, with no previous expertise in forgery, could at his time of life have developed the talent to produce such a convincing document has never been explained.

What offended ICAC was the mention in the memo of "our contact in ICAC" who could fix things if necessary. In our opinion, that should have made ICAC disqualify itself completely from the investigation, but instead it appointed an external overseer, who however had no control or authority as far as we could establish.

The hearings were orchestrated, it appeared, to get the most damaging publicity possible for Kite, whose evidence was given in open court, while NPWS witnesses, including the one whose signature appeared on the memo, gave theirs in camera. Kite's phone-calls — and therefore those of people speaking to him, including his aged mother and someone from WBA — were tapped, but as far as we could ascertain no-one else's were.

Kite's computer (and it seems no-one else's) was seized, in less than ideal circumstances, where contrary to what is now standard practice, he was not left with a copy of everything on it at the time it was seized. This procedure is an obviously necessary precaution against later allegations that material "found" on it had in fact been planted after seizure, and it seems odd that ICAC failed to follow it.

As it is, one is left to wonder — what result would we have got if there was indeed "a contact in ICAC"? Whistleblower crucified, discredited, and threatened with jail? Original allegations never investigated, let alone remedied? "Contact" never looked for, let alone found? Just a minute, isn't that what we actually got? "Maybe this is an opportunity to create the culture in which they feel safe, and they feel that they're going to be listened to." Yes, it was, Mr Pehm, but yet again ICAC has failed.

How can such a hopeless body possibly teach others to be effective?

Attempts to suppress Hoser books

Ray Hoser

Readers of the *Whistle* may have recently read or heard about the letters sent by […] ex-magistrate Hugh Adams and his lawyer, Mr. Pat McCabe of Deacons Legal Firm, to libraries telling them to get rid of Hoser's corruption books.

That's the letter that was meant to be kept secret from Raymond Hoser and his agents.

It went all over the place including to public libraries in Victoria and elsewhere, including New South Wales.

By instruction from Adams and/or his agents, the letter was not to be sent on to Raymond Hoser, his publishers or lawyers and everything to do with the letter was to be kept secret, save for the desired outcome, which we later found out was to shred and destroy all Raymond Hoser books.

Some Librarians were shocked with the tactics being used to suppress the truth, but were advised that if they resisted the directives from Adams, they would suffer other reprisals, including a blanket cessation of funding for numerous other projects.

Now none of this was lawful as twice (in April 2000 and December 2001), the Supreme Court of Victoria made formal written rulings that no one should attempt to stop sales and distribution of the Hoser corruption books (in this case *Victoria Police Corruption*, *Victoria Police Corruption - 2* and *The Hoser Files: The Fight Against Entrenched Official Corruption*).

Recall also that defamation proceedings against Hoser and publisher failed in 2000 on the basis that truth was a legal defence.

(Earlier defamation proceedings in relation to other Hoser books also failed on the basis that what was published in them was true, correct and accurate).

But Adams […] decided to go against these court directives and himself seek to stop distribution of these books in February [2002] by setting his lawyers onto the libraries with legal threats and yet more evidently false statements.

Which of course gets us back to this mysterious letter no one from the Raymond Hoser camp was meant to see.

Now surely, if I had got the facts about Adams wrong in any of the books, Adams could have sued for defamation (which he has chosen not to do), or perhaps even more reasonably, gone to me and identified what "facts" were in dispute, which again he never did.

[This is an edited version of the introduction to a much longer article discussing Hugh Adams. For the full version, see Ray Hoser's website at http://www.smuggled.com/. See also his books, mentioned above.]

Correspondence and WBA business

The Commonwealth Ombudsman is part of a bureaucracy that is stronger than Parliament

The Whistle for October 2002 reported on a conference of approximately 85 attendees that was held in Sydney on 6 August. The title was "Whistleblowing: betrayal or public duty?" It was organised by David Landa, former NSW Ombudsman.

The second of the eight main speakers was Brian Martin. He quoted the example of Bill Toomer who, as the Senior Quarantine Inspector for Western Australia, blew the whistle in 1973 on a monstrous quarantine scam. Administrators of the Department of Health appeased the powerful shipping lobby by effectively refusing to implement that part of the Quarantine Act that dealt with control of rodents on ships.

Approximately 80% of the Quarantine (General) Regulations were directed to this matter. Rodents include rats which are the established transmitters of a range of extremely dangerous exotic diseases that remain prevalent in overseas countries, for example plague.

Subsequent public evidence by alleged expert witnesses on behalf of the Commonwealth testified that rats arriving in Australia on vessels from overseas did not pose any significant risk. The shipping lobby was interested. Bill was refused permission to present expert witnesses to the contrary. He continued to blow the whistle thereafter to no avail. Although the quarantine inspection service was transferred in 1987 to the Department of Primary Industry, discontinuance of relevant statistical data precludes confidence that the problem is solved.

Brian stated correctly that Bill's career was destroyed, vast sums were expended, the organisation received bad publicity, morale declined, and the problem was never fixed. His case proves conclusively that the federal bureaucracy is stronger than Parliament. For example, remedies recommended in 1976 by a Royal Commission and in 1988 by the then Minister for Primary Industries & Energy were never implemented. Nor was the independent outside inquiry into Bill's case, that was approved in 1984 by Prime Minister Hawke, ever implemented.

One of the major influences is the Attorney-General's Department which, until recently, included the Australian Government Solicitor. The duty of both bodies continues to be protection of the Commonwealth, in much the same way that the duty of criminal lawyers is protection of their clients.

The seventh speaker at the August conference was Mr Ron McLeod AM, Commonwealth Ombudsman, whom I understand is recently retired. He gave an overview of how his office deals with whistleblower disclosures and gave advice to whistleblowers that is published in the same issue of *The Whistle*. Whilst his advice is sound, he is extremely wary of whistleblowers and reveals no appreciation that corrupt administrators lie to protect themselves. It would seem that he expects the whistleblower to provide a complete and totally compelling case.

He went on to state that "We start from a neutral position, we pride ourselves on being independent and objective. At times though we are seen by some whistleblowers as simply part of a wider conspiracy …"

In August 2001 Bill Toomer and myself complained to the Ombudsman that named public officials had lied to the Minister and subsequently to the Federal Court. The lies, which were identified in detail, are published as if they were fact in the Federal Court's reasons for judgement. A reply was received from an Investigation Officer who considered that there were no "special reasons justifying *further* investigation." We promptly objected and marked it for the personal attention of Mr McLeod. During October a Senior Assistant Ombudsman replied that the Ombudsman was overseas and had requested her to oversee the case. Her letter stated that matters raised "*have been under active consideration by an investigator* and our legal adviser" and that she wished to consult the Ombudsman before any final decision was made [my emphasis].

Mr McLeod replied on 21 November 2001, politely, that he did not propose to investigate the matter. (He did not say that he refused to investigate *further*.) His reasons were that:

- He was not persuaded by my assertion that certain public officials had knowingly provided false or misleading information. [I maintain that the evidence provided was complete and compelling.]
- He was not empowered to investigate actions taken by a Judge or a Minister. [I had not asked for this.]
- He had also considered the age of the matter [Bill's pursuit of justice was unceasing]; the inquiries that had taken place over the years [these included findings in Bill's favour by a Deputy Public Service Inspector, a Promotions Appeal Committee, and the Administrative Appeals Tribunal]; the resources that would be required by his office to investigate, and the limitations of his powers to investigate some matters. [The Ombudsman is not empowered to investigate employment matters but appears to be clearly empowered to investigate complaints of deliberate lies by public officials.]

I wrote back immediately that I was disappointed by the evasive nature of his response, and requested answers to 18 directly relevant questions. Mr McLeod promptly refused to answer my questions and notified his decision that any further correspondence with his office that related to Bill's past employment or claim to compensation would not be acknowledged.

Readers may judge from this example the appropriateness of the Commonwealth Ombudsman as a legislated "appropriate authority" to receive and deal with disclosures of alleged wrongdoing and protection of whistleblowers, or whether Bill and/or myself are paranoid.

Keith Potter
30 October 2002

Watching the sleeping watchdog

About 2000 years ago Juvenal asked "Sed quis custodiet ipsos custodes?" which translated means "But who watches the watchdogs?"

Over the last 12 months, a few media reports on the NSW Independent Commission Against Corruption have actually been critical of it.

This letter appeared in the *Sydney Morning Herald* on 7 November 2002.

> **Chairman is obviously hard to please**
>
> While the chairman of State Parliament's ICAC oversight committee, John Hatzistergos, acknowledges the improved investigative capacity achieved by ICAC commissioner Irene Moss, his implicit criticism (*Herald*, November 6) of ICAC's effectiveness is unfair. ICAC's annual report for 2001-02 shows that for every investigation conducted under Commissioner Moss, criminal proceedings are either continuing or have resulted in convictions. I'd have thought that a 100 per cent strike rate would have been the subject of acclamation, not inquisition.
>
> Stephen Murray, Hurstville, November 6.

This purports to be a letter from a member of the public. Stephen Murray happens to be the name of the executive officer to Irene Moss, the ICAC Commissioner. If indeed these Stephen Murrays are one and the same, then by trying to hide the fact that the letter is from a senior ICAC officer and implying it has been sent from the public, doubt is cast on the ethical standards and integrity of ICAC. ABC Mediawatch has previously exposed several instances of published letters from bogus letter writers appearing in the press. Irene Moss is very sensitive to media criticism of ICAC, and the media have on many occasions have published letters written by her criticising negative media coverage of ICAC. Letters critical of ICAC have seldom been published. Resorting to this tactic shows how desperate ICAC is to protect its tarnished image. The true story of ICAC's record is different. On 26 December 2001 *The Daily Telegraph* reported that the 2000/1 ICAC annual report shows it spent over $15m resulting in criminal charges being brought against 10 persons for acting corruptly, namely over $1.5m was spent for each criminal charge of corruption! This highlights ICAC's failure to act on corruption, as over 1,500 complaints and reports of corrupt conduct are received by ICAC annually.

On 16 December 2001, Alex Mitchell in the *Sun-Herald* named three senior ICAC officers as having links to the Labor Party. They were Lynne Chester, Grant Poulton and Stephen Murray, the writer of the letter to the *Herald.*

On March 17, 2002, Alex Mitchell, John Kidman and Jim O'Rouke reported in the *Sun-Herald* that ICAC had passed back to Cabramatta Council for "self-investigation" details of murdered MP John Newman's complaints of corruption within the council, and identified him as the complainant. ICAC had ignored the complaint itself. This is a tactic commonly used by ICAC when it received reports of corruption from whistleblowers it does not want to investigate. The Deputy Commissioner, Kieran Pehm, admitted at the seminar held in Sydney in August (*Whistle*, October 2002) that ICAC had acted wrongly (unethically?) in doing so. On November 2, 2002, Alex Mitchell and Candace Sutton wrote an exposé in the *Sun-Herald*, Naked City page ("All in the family") on cronyism in ICAC. This may be a reason why ICAC is ineffective in preventing systemic and institutionalised corruption in the state public service resulting from rampant cronyism. The report stated that:

> Independent Commission Against Corruption Commissioner Irene Moss was once the NSW Ombudsman and her deputy commissioner Kieran Pehm was once the assistant Ombudsman. Pehm's partner Jennifer Mason, who is Attorney-General Bob Debus's chief of staff, once worked for the Ombudsman as an investigator. In 1994, Court judge Trevor Morling cleared Mason of any wrongdoing after inquiring into an e-mail scandal within the Ombudsman's Office. Laurie Glanfield, director-general of the Attorney-General's Department, is a member of ICAC's powerful operations review committee and the department's acting deputy director-general, John Feneley, spent 10 years at ICAC as its legal counsel. We live in a fish bowl.

On 12 November 2002, the Attorney-General Bob Debus appointed Jeff Shaw, the previous Attorney General and his predecessor, to the NSW Supreme Court.

There is clearly a need for much more media attention and scrutiny which is critical of ICAC's independence, lack of accountability and unwillingness to investigate entrenched corruption and cronyism in the public service and other government agencies.

Joseph Palmer

Draft minutes of WBA Annual General Meeting

Parramatta, NSW
11.45 am on 23th November 2002

1. Meeting chaired by J Lennane, President.
   Minutes taken by C Kardell, National Secretary.

[2-3. Apologies and attendance are omitted here to preserve members' confidentiality.]

4. Previous minutes

J Lennane referred to the previous minutes published in the April 2002 edition of *The Whistle*, a copy of which had been made available to all present immediately prior to the meeting. She asked if anyone present could move that the previous minutes as published, be accepted as a true and accurate record.

Proposed: Feliks Perera.
Seconded: Geoff Turner.

5. Election of office bearers

J Lennane, nominee for the position of National President, stood aside for Brian Martin to proceed as initial returning officer.

- Position of National President.

Jean Lennane, being the only nominee, was elected unopposed. Cynthia Kardell led the meeting in thanking her for her continuing goodwill, and referred to her other activities as NRMA Board Member and in the "Save Callan Park" campaign, saying she "was doing us proud". Feliks Perera also thanked her, saying that he hoped she continued for years.

Jean Lennane served as returning officer for the remaining positions.

- The following nominees to the Executive were elected unopposed:

Vice President: Christina Schwerin
Treasurer: Feliks Perera.
Secretary: Cynthia Kardell
National Director: Greg McMahon.

Jean Lennane congratulated the incoming office bearers on behalf of the meeting and thanked them for their continuing good work and support of Whistleblowers.

- National Ordinary Committee Members (6).

The following (5) nominees were elected unopposed: Matilda Bawden (SA), Catherine Crout-Habel (SA), Frank Scott (WA), Geoff Turner (NSW), Information Technology and B Martin (NSW), International Director.

- Vacant positions.

J Lennane noted that the position of Junior Vice President and one ordinary committee member remained vacant and called for nominations from the floor.

i Junior Vice President: Peter Bennett (ACT), nominated by J Lennane and seconded by both M Bawden and C Scwherin, was elected unopposed by the meeting.

ii Ordinary Committee member: There being no volunteers or nominations, this position remains vacant. J Lennane noted that the National Committee could fill a casual vacancy on the committee as and when required.

Jean Lennane reminded the meeting that J Pezy, as SA Branch President, was automatically part of the National Committee.

Jean congratulated the incoming members and urged them and their colleagues to be actively involved at a national level.

6. Position of Public Officer

Jean Lennane advised the meeting that Vince Neary was willing to continue in the position of Public Officer if required.
Agreed: Vince's offer to be accepted with our thanks.

Business arising:

1. Jean Lennane advised that Vince Neary had forwarded an authority to pay the annual lodgement fee to the Dept. of Fair Trading, pursuant to legislative requirements, and requested that two financial members be authorised by the meeting to sign the application form on its behalf.

Agreed: Jean Lennane and Cynthia Kardell authorised so to do.

2. Vince Neary had also advised that public liability insurance was no longer required under legislative amendments to the relevant Act.

7. Treasurer's Report

F Perera tabled a financial statement for the 12-month period ending 30 June 2002. He said there were the usual expenses, but that the finances were in good shape. Briefly, details are as follows:

$3723.08, Income (subscriptions, donations, book account and bank interst)

$3209.25, Expenses (Whistle production, insurance, networking expenses, refunds to branches and AGM costs, etc.)

$513.83, Excess of income over expenditure

$4092.75, Accumulated fund balance b/f

$4606.58, Balance at Bank 30 June 2002

Jean Lennane called for the Report to be accepted as a true and accurate statement of accounts.
Proposed: B Martin
Seconded: C Kardell

Business arising:

- P Bennett raised the possibility of corporate membership as a means of increasing revenue. J Lennane indicated she would need to check the Act: she thought constitutional amendment might be required and that there might be issues as to voting rights.
- B Chand suggested members give a thought to providing tuition in workplace ethics as a revenue raiser.
- Subsequent discussion turned to increasing the membership with suggestions and comment from [various members]. All agreed advertising and getting known was the key.
- Derek Maitland, a former journalist, suggested the best form of advertising was free advertising, and personal whistleblower stories were the best. J Lennane said the difficulty was time, and asked if he was volunteering. Derek graciously took up the challenge. He said he has a full filming facility, and putting pen to paper comes more easily to him than most. The meeting expressed its gratitude and appointed him a casual ordinary committee member on the spot.

8. Other business

There being no formal agenda items, the meeting was opened for State reports and general discussion.

(i) Editor's Report
Brian Martin, Editor, briefly explained the production process, which relies for its success on the members' support in supplying articles,

information and media reports. *The Whistle* is printed at the Law Society print room before being mailed out by the NSW Branch. It is also put on Brian Martin's website at the University of Wollongong. The next edition in January will include the Draft Minutes of the AGM.

(ii) International Liaison
Brian Martin reported that besides Whistleblowers Australia there was only one other national whistleblower organisation in the world based around a membership largely composed of whistleblowers: Freedom to Care in Britain. Also of significance is the Government Accountability Project in the US, which has a limited mandate and is run (mostly) by lawyers. He is continuing to build links and only recently, has been talking to a journalist in Germany. He urged the meeting to reach out to individuals and organisations with shared concerns, such as journalists, lawyers and free speech organisations.

(iii) NSW Website
Geoff Turner talked briefly about the nature and extent of the email to the NSW website, which he re-routes to others. Ensuing discussion indicated that Geoff was too modest about his activities and appeared to be doing a considerable amount in the way of information transfer between the members. The meeting thanked him and asked him to keep up the good work.

(iv) Report from Victoria & Western Australia.
In the absence of A Lovell and M Vogt, C Schwerin was able to provide a report as she alternates between the two States.
In brief, the 'Lewandowski' matter, the Police Royal Commission and its consequences for Avon Lovell, WB member, had dominated the WA activities over the last five months, almost to the exclusion of all else. Similarly Mervyn Vogt, who is Chair of the Victorian group, has been overwhelmed by his own 'Telstra' matter.
Unfortunately, both the Victorian group and the WA Branch appear to have had difficulty in maintaining organisational momentum and regular meetings.

(v) Report from South Australia.
Matilda Bawden & John Pezy (President) reported on the Branch's activities. They have a number of demanding matters in hand and are also organising for a film night around the recently released film "Black & White", which is revealing of police corruption and culture.

(vi) Report from Queensland.
Feliks Perera has tried to get a group together in Queensland, but so far without success. He will continue to explore the opportunities as they arise, with a view to building up a critical mass.

(vii) Report from NSW
Considered unnecessary in the circumstances.

9. The meeting adjourned for lunch at 1300 hours and re-convened at 1345pm.

10.Discussion Agenda
Jean Lennane gave a potted history of the Gary Lee-Rogers matter [see media story in this issue]. Gary, recently found dead at his Queanbeyan flat in NSW, was a member of WBA. He had asked other members to blow the whistle, in the event of his death, as it was unlikely to be natural causes. Thus far, there is no known cause of death, which Jean reckoned would be labelled as suicide. Jean expressed sadness that a member was dead but emphasised the opportunity it provided to push for a fresh framework for managing investigations in these circumstances.

The meeting was asked to use the Lee-Rogers and Lewandowski matters as a reference for discussion based on the agenda items previously advised.

Three discussion items, entitled "Saints, Never Sinners", "Only the Bad Guys Get Done" and "Bounty Hunters Beware," were set to engender discussion of the double standards which usually work to define and confine whistleblowing. The meeting was asked to consider whether sometimes, the double standards are (in some ways) kept alive by whistleblowers, to their detriment.

11.Guest Speaker.
Mr Peter Rooke, Projects Director, Transparency International Australia (TI Australia) gave a short talk before taking questions from the meeting.

He explained TI Australia was a chapter of an international organisation, now active in 80 countries. They have multiple concerns, humanitarian, ethical and practical. Its membership is diverse, and brings civil society, business, governments and international organisations together in a global coalition to curb both international and national corruption.

He described how Treasury put out a paper entitled 'CLERP9 Corporate Governance Reform Proposals', which proposed limited protection for employees reporting breaches to ASIC. TI Australia made a submission in reply, which proposes a much broader application of the proposals. TI Australia wants protection for all public interest disclosures made across the private sector.

Close of meeting.

J Lennane thanked all those present for attending, in person and by way of tele-conference, and asked them to express their appreciation in the usual way for the meeting's organisers, namely C Kardell, A Stonham, B Steele, and in particular, G Turner, who again made it possible for interstate members to attend by tele-conference link.

Meeting closed 4pm.

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.
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Information for librarians

The Whistle has appeared at irregular intervals, making it difficult for both members and librarians to know when they have missed an issue. Issues will henceforth be numbered sequentially, with the first national issue retrospectively dubbed No. 1. Here's a full listing. E-versions are found at www.uow.edu.au/arts/sts/bmartin/dissent/contacts/au_wba/.

No. 1, August/September 1995
No. 2, November/December 1995
No. 3, January 1996
No. 4, February 1996
No. 5, April 1996
No. 6, June 1996
No. 7, August 1996
No. 8, October 1996
No. 9, January 1997
No. 10, March 1997
No. 11, May 1997
No. 12, August 1997
No. 13, December 1997
No. 14, March 1998
No. 15, May 1998
No. 16, July 1998
No. 17, September 1998
No. 18, November 1998
No. 19, March 1999
No. 20, June 1999
No. 21, September 1999
No. 22, December 1999
No. 23, February 2000
No. 24, June 2000
No. 25, October 2000
No. 26, December 2000
No. 27, June 2001
No. 28, January 2002
No. 29, April 2002
No. 30, July 2002
No. 31, October 2002
No. 32, January 2003

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Membership of WBA involves an annual fee of $25, payable to Whistleblowers Australia, renewable each June. 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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