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

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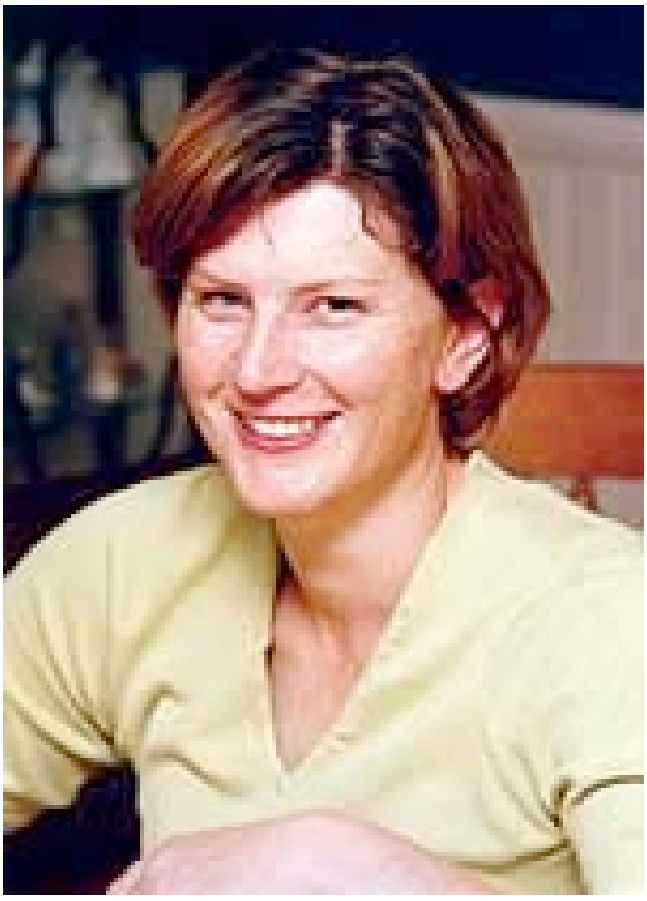

Julie Gilbert, Queensland Whistleblower Supporter of the Year, 2003

Media watch

Support for people who speak out

Editorial
Australian, 8 January 2004, p. 10

When any organisation has a legal or ethical problem the universal bureaucratic instincts of self-preservation take over. People shut up, sit tight and hope the dangerous documents that give the game away never find their way to the outside world. The worse fate that can befall a company or public-sector agency with something to hide is to have an enemy within — a whistleblower. But what is bad for people who are trying to hide serious mistakes or plain wrong-doing is very good for the community at large. The scandalously poor standards in southwest Sydney hospitals — 19 possibly needless deaths are now with the coroner for investigation — only became public because five nurses had the courage and determination to keep complaining. And when their complaints and warnings were ignored they broke ranks with their colleagues and spoke publicly.

But doing the right thing and blowing the whistle is never easy. Whistleblowers are rarely thanked by their organisations. More often they are punished or left in limbo. University of New South Wales academic Bruce Hall has been able to strenuously defend his reputation against the conclusion of an inquiry that he used false data in research — and remains employed at the university. But some of the junior staff who spoke out against him fear their careers are in jeopardy. In the case of the Sydney nurses, their reward for breaking ranks against their hospital colleagues was to be vilified and forced to find new jobs.

Certainly there are state and federal agencies charged with regulating government and industry in the business of investigating complaints from whistleblowers. But as the Sydney nurses discovered, it is often hard to get powerful people to take allegations seriously. The Health Complaints Commission turned out to be part of the problem, not the solution, largely whitewashing the hospital management. Which means the media has a necessary role to play in assisting whistleblowers when systems fail and they are variously ignored or persecuted for speaking out. Inevitably, not every person who rings a journalist with amazing allegations of corruption and cover-ups acts in good faith. But for those who do, the media can help ensure their questions are answered. It is an important support for people who play an essential social role. Whistleblowers like the Sydney nurses know that speaking out might ruin them — and do it anyway.

How Australia should fight white-collar crime

We need whistleblower legislation — it could save governments billions, writes **Kim Sawyer.**
The Age, 21 January 2004

An unidentified employee put a stop to the losses recently incurred by the National Australia Bank by informing management of the unauthorised trades.

Whether the company is Enron, WorldCom, Parmalat or NAB, it often requires a whistleblower to identify corporate malfeasance. Whistleblowers have become the independent regulators, the eyes and ears of the shareholders.

One of the main reasons for this is that our systems are so complex that only an insider can identify wrongdoing. A second reason is that regulators are often too risk-averse to act. A whistleblower testified before the HIH royal commission that his advice to the Australian Prudential Regulatory Authority that the net assets of HIH could be at risk was ignored. As HIH showed, substantial losses can be incurred when whistleblowers are ignored.

In Australia, whistleblowers are even more important than in other countries because of our small business network. When regulators and those they regulate are too close, there are governance risks. There is a final reason: many of our former public institutions, such as universities, have become semi-private. But there are no shareholders, and there are no market analysts assessing their accounts. As a consequence, there is often less transparency than for a publicly listed corporation.

Whistleblowers are rarely protected. Yet a survey on global fraud by Ernst and Young identifies whistleblowing as the second-most important control of fraud behind internal controls, and more likely to detect fraud than internal and external audits. The OECD, in its latest report on corporate governance, lists the protection and encouragement of whistleblowers as one of the most important principles of corporate governance. They recommend a confidential contact on the boards of companies to whom whistleblowers can report.

In the United States, the most powerful act to protect whistleblowers is the False Claims Act, which allows whistleblowers to initiate lawsuits against fraudulent claimants on the government. This act is used to combat many types of fraud, including Medicare fraud and computer-based fraud. A fraudulent claimant may be liable for three times the loss suffered by the government in addition to civil fines. Importantly, the act not only entitles the whistleblower to protection, but to share between 15 and 30 per cent of the money recovered by the government.

The act is a credible deterrent because the penalties are severe, the statistics on fraud recovery are widely published, and the onus of proof falls on the respondent as well as the whistleblower. Since 1986, more than $6 billion has been recovered, the average recovery per case has been more than $7 million, and the average amount to whistleblowers 18 per cent of the cost recovery.

In Australia, where there is no false claims legislation, estimates of fraud vary. A recent inquiry into fraud and electronic commerce in Victoria, for example, estimated losses between $200 million and $1.2 billion. But some estimates put the annual cost of

fraud to all types of government in Australia as high as $20 billion.

White-collar crime is an important economic problem. It is time Australia also had effective laws to combat it.

Kim Sawyer is an associate professor at the University of Melbourne [and a long-standing member of Whistleblowers Australia].

Protect, not pay, whistleblowers

Inside information can be the key to finding and fighting collective wrongdoing.

Editorial, *The Age,* 23 January 2004

Inside information is often the most effective weapon against collective wrongdoing, from corporate misconduct to organised crime. It may produce the first warning that something is seriously amiss, as in breaches of corporate governance that lead to hidden losses of staggering magnitude. It also may be the best means of obtaining evidence admissible in court if investigators are otherwise confronted by a conspiracy of silence. Law enforcement agencies can procure inside information in three ways: relying on a whistleblower or inside informant, infiltrating the suspect organisation with an undercover agent, or gathering evidence through electronic surveillance. The first is usually the most effective. In the United States, the Federal Bureau of Investigation has used all three means, backed by controversial anti-racketeering legislation, to cripple the once-impenetrable Mafia.

In Australia, "dobbing in" wrongdoers has long been regarded either as not the done thing or as too hazardous to venture. But the tide of opinion is changing; witness the growing success of police "crime-stoppers" and Tax Office anonymous "tip-off" programs. When more serious criminal or civil wrongdoing is involved, the value of the whistleblower is exponentially higher. In such cases, conscience and courage may not be sufficient motivation, especially if the whistleblower's identity cannot be concealed or if he or she has to be a witness for the prosecution. Legislation to protect informants against retribution — from ostracism or dismissal to intimidation or extreme violence — has not been sufficiently effective. It needs to be comprehensively strengthened and more rigorously enforced.

More controversial is the question of pecuniary incentive for whistleblowers. Police are not above using inducements in cash or kind, from privately subsidising their "snouts" to publicly posting big rewards for information leading to conviction when stumped in a major murder inquiry. In the United States, the False Claims Act, which has been remarkably successful in combating large-scale fraud, not only protects whistleblowers but allows them to share in the money recovered by the government. This statute reinforces the draconian RICO (Racketeer-Influenced and Corrupt Organisations) Act, which also makes it easier to procure convictions and provides for crushing criminal and civil penalties.

Enticing whistleblowers by monetary rewards seems morally repugnant and runs the risk of attracting maliciously based information or tainted evidence of suspect credibility. It would be better to try to counter the anti-dobbing culture ingrained in many organisations and offer effective protection to whistleblowers who volunteer vital information in cases of corporate malfeasance, official corruption or criminal conspiracy.

Whistleblowers still out in cold

The exposure of unauthorised trading at the NAB has highlighted the risks taken by whistleblowers, writes

Annabel Hepworth

Australian Financial Review, 17-18 January 2004, p. 4

When the National Australia Bank introduced its upgraded whistleblower policy last August it probably didn't envisage starring in a home-grown version of the film Rogue Trader.

The unauthorised trading that has lost NAB up to $180 million was initially exposed by a staff member on the trading desk in Melbourne, according to reports.

The informant can take some comfort from NAB's policy, which according to the bank protects whistleblowers from harassment, discrimination or dismissal.

NAB's broadened policy was introduced at about the time Standards Australia was releasing a new standard on whistleblower protection and not long after the US Sarbanes-Oxley governance rules, which require confidential hotlines to be made available to company personnel, came into force.

Mechanisms for dobbing in at NAB range from reporting concerns to a senior manager to using a confidential hotline and email service.

The bank's policy has sent a "very clear message," although NAB has long encouraged people who have come forward, a spokeswoman says.

She would not comment on the specifics of the unauthorised trading scandal.

The bank has previously used a number of mechanisms for dealing with a range of disclosures and whistleblowing protection, but the August policy has strengthened that framework, she says.

NAB corporate affairs director Robert Hadler says the bank has been working on a culture of openness for a "long period" and believed it had contributed to the actions of the person who revealed the trades.

But while a whistleblower might have exposed the problems at NAB, there are a profusion of forces conspiring against employees who want to dob in rogue colleagues. Experts warn that whistleblowing laws are fragmented and cosmetic, are not enforced aggressively enough and until recently have failed to deal with informants. They simply do not stop some whistleblowers from being marginalised.

Western Australia's former top policeman and now chairman of STOPline, Bob Falconer, says laws do not provide adequate protection to stop staff from being discriminated against for blowing the whistle. But that is only part of the problem.

He says whistleblowers can be victims of "psychological warfare." Retaliation may be anonymous and untraceable, and includes "being frozen out of the office subculture."

Falconer always urges whistleblowers to keep their identities secret. He believes anonymity is the surest way to protect and encourage whistleblowers.

Falconer, who has spent 40 years combating misconduct, cautions them: "Do not come out for your 15 minutes of fame because you'll pay for the rest of your career."

Victoria has the most sweeping legislation, which protects whistleblowers in the public sector.

In NSW, there are laws to protect employees of public bodies, but they do not enable whistleblowers to stay anonymous. In Queensland there are laws for staff in public entities, which allow anonymity.

Legal sources say the federal government's Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003 will give some protection to whistleblowers who have exposed company breaches of the Corporations Act.

But they will not pick up on all whistleblowing.

Kim Sawyer, from the University of Melbourne's department of finance, says whistleblowing laws have one common trait — they fail to lead to any prosecutions for victimising whistleblowers.

Experts agree that encouraging whistleblowing needs to be part of the corporate culture.

Westpac runs a "Concern Online" for employees to report misbehaviour, a spokeswoman says.

The national president of Whistleblowers Australia, Jean Lennane, agrees that even when CLERP 9 is introduced, it will not encourage whistleblowing.

"The reality of whistleblowing is that the retaliation that occurs in a corrupt organisation is so rapid that the whistleblower is out on the street, lost their job, has no money and so on, within 24 hours," Lennane says.

"And to expect as [CLERP 9] does and as most whistleblowing legislation does, that the whistleblower can then pick themselves up, find money, find a lawyer and launch some sort of legal proceedings is pretty fanciful."

House of Reps inquiry into destroyed docs

Susann Kovacs
Queensland Independent,
November 2003

THE House of Representatives inquiry into Crime in the Community will take evidence about Queensland's document shredding scandal, the Heiner Affair, at the Commonwealth Government Centre in Brisbane this month.

Witnesses will take part in public hearings to be held by the House of Representatives Standing Committee on Legal and Constitutional Affairs.

University of Queensland journalist in residence Bruce Grundy, Queensland University of Technology senior lecturer in law Alastair MacAdam, and prominent Heiner authority Kevin Lindeberg will give evidence.

The origin of the shredding scandal centres on a decision by State Cabinet in 1990 to destroy all documents gathered by retired magistrate Noel Heiner's short-lived investigation into a state-run youth detention centre.

Mr Lindeberg said he was not surprised the Heiner affair was again the subject of investigation.

"There is no doubt that the Heiner affair is a scandal of real national significance to the rule of law, governance and child protection, and it is quite understandable why Mrs Bishop and her committee members are prepared to devote their time and resources to take evidence on it," Mr Lindeberg said.

Mr MacAdam said he would be attending the hearing in his capacity as an academic lawyer. He hoped to illustrate for the committee the defence used to justify inaction over the matter by the former Criminal Justice Commission (CJC), a former Director of Public Prosecutions (DPP) and the police had no credible basis in law.

Material destroyed when the Heiner Inquiry was aborted included evidence of the rape and torture of children in the care of the state.

It has since been revealed the Cabinet of the day was aware the documents approved for destruction were being sought by a firm of solicitors for legal action.

In the 13 years since, three chairmen of the former CJC, a former DPP, a former head of the CJC complaints division and a currently serving magistrate have all defended the legality of the shredding on the grounds no legal action had commenced at the time of the destruction.

A number of prominent legal academics, including Mr MacAdam and a former Queensland Appeal Court judge, have rejected this view.

In March this year a man was committed to stand trial for destroying the pages of a girl's diary that may have been required in evidence, although no legal proceeding was under way at the time and none commenced for a further five years.

At the committal hearing the prosecutor from the Office of the DPP told the magistrate the offences involved could be committed even if no court action was under way at the time material, likely to be used in evidence, was destroyed.

The hearings are at Level 36, Waterfront Place, in Eagle Street, Brisbane.

For full details see
www.eastes.net/justiceproject

[Kevin Lindeberg is the central figure in one of WBA's whistleblower cases of national significance.]

Whistle-blower awarded

By Naomi Lindeberg
Queensland Independent,
November 2003

QUEENSLAND'S Whistleblower Action Group has named Julie Gilbert the Queensland Whistleblower Supporter of the Year.

Ms Gilbert was acknowledged for her exposure of Director of Public Prosecution (DPP) processes after charges against her former swimming coach, Scott Volkers, were dropped.

The mother of four, who is nearing the completion of a Bachelor of Health Sciences, in addition to being a qualified high school teacher, said she knew about the Whistleblowers Association, but was not aware it gave awards.

"I was very surprised. it's a nice recognition," Ms Gilbert said.

Whistleblowers Australia national director Greg McMahon said the group was impressed by the courage Ms Gilbert had shown.

"Our focus is on the degree of assistance that that person is to the lot of whistleblowers," he said.

"In Julie's case she has brought public attention to the malpractices that appear to be occurring within the office of the Director of Public Prosecutions."

The DPP has re-opened the investigation into Mr Volkers alleged indecent dealings with three girls aged under 16 during the 1980s.

Police are believed to be preparing a fresh brief of evidence in the case.

"It is with the DPP — the same one," Ms Gilbert said.

"They're finishing off the investigation in consultation with the police, with the view of hopefully sending it down south and to charge him again."

Ms Gilbert said she was surprised she had the courage to make the complaint.

"When I first made the statement to the police, I couldn't believe that I had actually done it," she said.

"I am surprised that I can talk about it now.

"I thought I would tell the truth and everything would go smoothly and in my naive little world, I thought it would.

"I started to realise that this thing is bigger than you and you have to fight very hard.

"When it's all over, it will change my life — there's no two ways about that ... mainly because I've had to confront something that I have blocked out for many, many years.

Mr McMahon said he believed whistleblowers suffered considerably because of a lack of integrity in the processes of the DPP's office.

"Whereas we have not been able to bring much attention to that situation, Julie Gilbert has," he said.

"Hence, when a whistleblower raises issues about the practices within the office of the DPP, we are likely to be believed because of what Julie has been able to demonstrate."

Awards recognising the efforts of Queensland whistleblowers have been awarded since 1993, with the University of Queensland's journalist-in-residence Bruce Grundy the only other recipient of Supporter of the Year, in 1996.

Whistleblower nurse slams Premier

by John Kidman
Sun-Herald (Sydney), 8 February 2004, p. 27

Her colleagues have christened her Erin Brockovich after the legal rights activist made famous by Hollywood and now Bob Carr knows why.

Whistleblower nurse Nola Fraser has written a scathing eight-page letter to the Premier, demanding a private meeting and a royal commission into the NSW health system.

Ms Fraser described the Government's response to the hospitals crisis as "inadequate and ineffective."

"NSW has never had so many administrators, independent boards, independent commissions and independent investigative bodies and yet the health system has never been so purulent and terminally diseased," she wrote. "You have taken a good, competent health system, which I was proud to be part of, and in just seven years managed to turn it into something that horror movies are made of."

Ms Fraser described in graphic detail the death of three patients at Campbelltown Hospital. She provides a first-hand account of the treatment the women received, the subject of damning investigations by the NSW Health Care Complaints Commission (HCCC).

The HCCC last year determined that 19 patients at Campbelltown and Camden hospitals died between 1999 and 2003 after receiving inadequate or unsafe care.

The watchdog's findings have so far sparked four public inquiries, set up to examine evidence of hospital negligence and impropriety linked to the way in which health-care complaints have been managed and dealt with.

Ms Fraser, however, put to the Premier that nothing short of a royal commission would get to the bottom "of this sorry mess."

Initial investigations by NSW Health were covered up, she alleged. The HCCC has proved that it is "incompetent and not independent" and concerned mostly with "covering the Government's backside."

Furthermore, the Independent Commission Against Corruption initially chose not to investigate complaints raised 15 months ago and was only interested in watering them down, she said.

And the Government's special commission of inquiry, headed by Bret Walker, SC, was looking only at issues relating to Campbelltown and Camden without scrutinising hospital practices in Sydney's greater south-west.

"Why, in fact, are there at least five separate inquiries into the allegations all running at the same time?" Ms Fraser asked. "One could be forgiven for thinking that it is a deliberate attempt to do little at all and to take as long as possible to do it."

Ms Fraser demanded a meeting with Mr Carr and Health Minister Morris Iemma to discuss "the continued criminal and corrupt practices endemic within the health system."

A spokesman for Mr Carr told *The Sun-Herald* yesterday the Premier would be willing to meet the nurses following the Walker and ICAC inquiries but that it was not appropriate for him to do so beforehand.

Trivial reprimand dulls learning's light

The University of NSW has let its big fish survive while whistleblowers perish, argues **John Carmody**
Australian, 29 December 2003, p. 11

Since Tuesday's catastrophic announcement by the University of NSW Vice-Chancellor, Professor Rory Hume, of his trivial reprimand of Professor Bruce Hall on charges of scientific fraud, I have had numerous visits and phone calls to my office and home from colleagues who were almost in tears of desperation or fury. In one case, I was seriously concerned about a possible recurrence of a previous heart attack, so intense was my colleague's distress.

These academics all had the same worry. There is nothing more important to the life and work of universities than truth. They are also, as Disraeli said, places of light, of liberty and of

learning but all of these must rest on a foundation of truth, or everything else is futile. That, inevitably, is why in April last year (after ABC radio's Science Show and The Australian broke the story) the UNSW Governing Council was so disturbed by those allegations of scientific dishonesty, financial fraud and bullying by Hall.

Hall, a transplant immunologist in the School of Medicine at the Liverpool Hospital, had been accused by two fellow researchers and a doctoral student of misconduct that could be seen as scientific fraud. The complainants claimed Hall had fabricated results of transplant-rejection experiments with rats, manipulated the authorship of scientific papers and falsely claimed in a grant application that an experiment had occurred. Against the wishes of the senior executive of the university, the Governing Council resolved immediately to set up an independent external enquiry, "to find the deep truth" as one member put it at the time.

That group, including three extraordinarily eminent medical scientists and led by the former High Court chief justice Gerard Brennan, delivered a damning report early this year and almost immediately Hall obtained a temporary suppression order in the Supreme Court. In August, however, his case was dismissed in its entirety and he was required to pay the university's costs.

Hall remained aggressive and adamant in his defence, telling the ABC's Four Corners in October that he took that legal action essentially to protect the independent investigators from their folly and ignorance. Meanwhile, Hume has persistently argued — to the intense frustration and dismay of academics inside UNSW and beyond — that the university's enterprise agreement required that the Brennan report be suppressed until all potential disciplinary processes were exhausted. That argument — if, indeed, it ever had any validity — is now utterly spent and it is clear (this is also the view of the Brennan group, I believe) that public interest, not to mention the confidence of the taxpaying public in UNSW and Australian medical science more generally, requires that the report be published promptly. In the meantime, what further can be said about that perplexing decision by Hume? He decided that Hall would receive nothing more than a censure, finding him guilty of only minor misconduct, meaning he will escape harsh punishment such as dismissal or demotion. The remaining questions include the incongruence of Hume's view of the seriousness of the charges against Hall with that of his colleagues, not to mention the court of public opinion.

What of the damage which he may do to the standing of UNSW, not least with the numerous funding bodies which so crucially support the university's research? What of the dismaying affront given to the distinguished and honourable members of the Brennan committee? They include the professor of medicine at Oxford, Professor David Weatherall, a former president of the Royal Australasian College of Physicians, Professor John Chalmers, and the current director of the John Curtin School of Medical Research at the Australian National University, Professor Judith Whitworth. Their names are on the public record, yet although Hume has canvassed and relied on several other advisers, he has stoutly refused to name them and thus call them to account. There lies an enormous irony. For all of his concern for punctilious procedure — and the glacial pace at which it progressed — the procedure adopted by the vice-chancellor in this case is indefensible. He has essentially set aside the multi-volume Brennan document with its masses of transcripts of evidence and its several findings that Hall had behaved with "reckless disregard for the truth" and "seriously deviated" from "commonly accepted" scientific practices. It is most unusual for an appellate court to so discount the factual findings of earlier proceedings with their direct experience of the witnesses. Perhaps worse, in engaging the opinions of those anonymous others he has really permitted the introduction of new evidence from which the "whistleblowers" were excluded and therefore had no opportunity to refute. What, too, of those whistleblowers? So far, this case has all of the hallmarks — despite the best intentions of the Protected Disclosures Act (NSW) — of the usual melancholy story: helped by their peers, the big fish survive while the whistleblowers perish. UNSW has, from the first, resisted granting them protected disclosure [status]. It has dragged its feet in conducting what was a legally mandated but patently unsatisfactory investigation by the dean of medicine, Professor Bruce Dowton. It responded to the initial public revelations with a derisory and unsupportable rebuttal, by the Deputy Vice-Chancellor, Professor John Ingleson, and left a PhD student still, more than two years later, without a replacement supervisor for Hall. That list highlights further risks to a university whose reputation, many feel, is already becalmed (at best). There will be an understandable disincentive which this story offers to undergraduate and postgraduate students who are considering joining the UNSW community.

So the senior executives of UNSW and Hall may currently feel or hope that they have won a victory but the press response to the vice-chancellor's unconvincing announcement and the gathering storm clouds may yet show that this "victory" is Pyrrhic.

Dr John Carmody, a member of the UNSW Faculty of Medicine, has for seven years been a member of university's Governing Council, elected by his academic colleagues.

Make blowing the whistle an honour

Whistleblowers should not be pariahs, write

Thomas Faunce and **Steven Bolsin**

The Australian,
19 December 2003, p. 11

The NSW Health Care Complaints Commission's inquiry into medical services at Campbelltown and Camden hospitals provides yet another example of an unfortunate paradigm. Five former nurses — Nola Fraser, Sheree Martin, Yvonne Quinn, Valerie Owen and Vanessa Bragg — spent 13 months challenging the inadequate standard of medical care at those institutions in every level of the healthcare bureaucracy.

Following the overseas experiences at the Bristol Royal Infirmary and Winnipeg Hospital, the whistleblowers

were eventually vindicated. Numerous patients' deaths and injuries were proven to have resulted from errors of medical judgment and complacency. The healthcare system eventually responded vigorously.

Meanwhile, those courageous individuals have suffered victimisation, bullying and loss of employment. None of the nurses who voiced concerns about clinical competence at Campbelltown and Camden hospitals is still employed in healthcare.

The recent enactment in many jurisdictions of equivalent legislation to the Public Interest Disclosure Act 1999 (UK) confirms a trend by lawmakers and the public to support whistleblowers against unjust reprisals. Yet it seems a healthcare whistleblower is presumed by many in powerful regulatory positions, despite contrary public protestations, to be disaffected, antisocial, presumptively incompetent and an institutional pariah. In short, not a team player.

Three categories of institutional response have been shown to typically follow an instance of external whistleblowing. Rarely is it procedurally correct. Indeed, the reaction is invisible obfuscation or silent inaction.

Frequently, however, the institution's response is hostile and involves inappropriate strategies such as immediate notification of the complainant to the alleged offender, diversion of blame, psychiatric and competence pillorying and destruction of evidence. Veiled reprisals may include formal reprimand, closer monitoring by supervisors, social exclusion, public humiliation, job transfer or gradual demotion and withdrawal of resources.

Whistleblowers may be overlooked for promotion or whispered about negatively in corridors and tearooms. Few colleagues are willing to support their allegations in public, even when they know themselves to possess supporting evidence. Unemployment, bankruptcy, litigation, divorce, mental illness and suicide are common outcomes of the act of whistleblowing.

The Senate Select Committee on Public Interest Whistleblowing concluded that whistleblowing is a legitimate form of civil action within a democracy. Contrary to popular institutional stereotype, the common pattern, disclosed by research, is that whistleblowers typically report through standard internal channels in the first instance. They expect their institution to support their attempt to expose the misconduct and quickly resolve the problem.

Extra-institutional appeal mechanisms, both formal and informal, are resorted to only once the whistleblower has reached the conclusion that the organisation is amoral, its senior management torpid or complicit, or that he or she has ethical expectations for the quality of service provision that are higher than those of its leaders.

Health professionals with an active conscience should be regarded as a valuable resource in our public hospitals. Yet medical academe and the professions appear not to be doing enough to train, encourage and support individuals with such important personal characteristics.

Presidents of the Royal College of Surgeons and the Royal College of Anaesthetists in the UK, for example, both knew about the problems at the Bristol Royal Infirmary but lacked sufficient will and conscience to set a positive example and prevent the unnecessary deaths of children undergoing cardiac surgery. Similarly, in the Harold Shipman scandal, colleagues of the mass-murdering general practitioner raised concerns with the local health authority but were falsely reassured.

Likewise, concerned and courageous doctors and nurses had to overcome many institutional obstacles to blow the whistle on an incompetent pediatric cardiac surgery service in Winnipeg, Canada.

A variety of personal, bureaucratic and historical factors may contribute to the healthcare system's highly critical response to whistleblowers, and to its lack of prompt and adequate internal institutional investigations and resolutions of their concerns. In the interests of public safety, these factors need to be identified, researched and transformed. Transparency, honesty, objectivity and diligence in the processing of allegations of healthcare incompetence should be regarded as a sign of an institution's regulatory maturity.

Most important, however, the public should recognise that healthcare will always need whistleblowers. Indeed, a strong case can be made that whistleblowers should be encouraged, cherished and protected, and that whistleblowing ought to be taught in our medical and nursing schools. It's time for it to be respected throughout the healthcare system.

Thomas Faunce is senior lecturer at the Australian National University's medical school. Steven Bolsin is director of peri-operative care at Geelong Hospital.

The conscience clause: keeping the independent scientist extant

Henri-Philippe Sambuc
and Frédéric Piguet
The Scientist, Volume 17, Issue 19,
6 October 2003, p. 8

The few scientists who have had the courage to oppose their employers' silence regarding the harmful effects of products related, for instance, to food, public health, or the environment, have generally seen their lives destroyed. Defamation campaigns, threats, legal actions, and various pressures have made their careers, family lives, and health miserable.

Science is a complex intellectual exercise based, most notably, on individual freedom and free will. Only other scientists can assess the intellectual findings of their limited group of peers who are capable of understanding a given issue. Thus, scientists represent a special, tight-knit community within society, a self-appointed group whose work is scrutinized by peers and made public by recognized scientific publishers. The modern legacy of science and its legitimacy is mainly the result of the following basic premise: Scientists are responsible people because they are independent and what they say is true.

However, stories about fraud in scientific research or the theft of colleagues' or students' data are not uncommon. Moreover, professors who serve private interests are being appointed to public committees, and it is not unusual to see political pressure

being brought to bear on scientific institutions. Differences in opinion among scientists about the ethics and values at stake in evaluating various technological risks fuel scientific controversies despite the fact that few scientists are prepared to deal with these issues and thus offer an independent perspective. Finally, there is the issue of some products on the market misusing scientific discoveries, putting public health and the environment at risk and misleading the public about the relevance of certain political issues.

Often, scientists who are most respectful of ethical issues become discouraged and leave the profession. Those who remain usually do not control the intellectual rights to their discoveries and their employee status prevents them from saying "no." Scientists who prefer to follow their conscience are sometimes forced to act contrary to the interests of their employers; as a result, they step into a nightmare that can transform, and often destroy, the rest of their lives. Can one accept that those scientists who seek to remain free and independent be treated as criminals? How can one re-create an environment for science and scientists that offers enough space for independence and the ability to follow one's conscience?

Scientists are not ordinary whistleblowers. The sophistication and the social impact of their efforts mean that specific tools must be created to protect them when they express their doubts about misleading scientific information. Civil society and the scientific community must fight to establish the special legal status necessitated by the vital role scientists' independence plays in scientific research and application. Scientists who have the courage and determination to exercise their responsibility to science itself and to society as a whole have an undisputed right to be praised, cherished, and thanked. The public can rely only on scientists and engineers who exercise their freedom of speech and who can understand and integrate society's values into their assessment of technological risks.

The Fondation Science et Conscience and the Association for the Promotion of Scientific Accountable Behaviour, both of which are located in Geneva, are promoting, as a partial answer to this worrisome situation, an international convention on protecting a scientist's right to say "no" when products are sold in the marketplace, despite potential risks for public health, food, and the environment.

The Conscience Clause Convention (www.apsab.span.ch/clc/) aims to re-establish a certain equilibrium between a specific group of employees (scientists and engineers) and public or private employers through an appropriately defined set of controls.

Society needs to restore the freedom of the individuals whose intellectual creativity, knowledge, and ethical awareness shape our future. This mission faces two challenges: to make the public understand that the independence of this small group is the only way to protect itself, and to convince individualistic scientists to be involved more collectively in social issues. Scientific groups and international organizations, such as UNESCO, which is involved in scientific issues, and the International Labour Organization, which promotes workers' rights, should join forces and support these efforts.

Henri-Philippe Sambuc is President of the Fondation Science et Conscience, and Frédéric Piguet is the Executive Secretary for the Association for the Promotion of Scientific Accountable Behaviour.

CONSCIENCE CLAUSE FOR SCIENTISTS AND ENGINEERS

Definition

The conscience clause entitles any scientist or engineer employed by any private or public organization (hereafter known as the "organization") and having duties or responsibilities in the field of science or technology to report to an independent body in the country in which the organization's headquarters or the headquarters of its parent company are located any and all activities undertaken in ongoing and deliberate breach of:

The precautionary principle
Public health
The environment
Ethical and professional codes regarding scientific research and technological production

Confidentiality

The independent body shall guarantee that the information provided and the informant's identity remain confidential.

Protection of the informant

Informants shall be provided with judicial compensation by the Organization or administrative compensation by the State for any harm they may have suffered as a result of information given when such information actually constitutes a violation of the points mentioned above.

Prosecution

The enterprise at fault shall be held liable if the case presented by the informant is well-founded. Similarly, any member entity of the Organization cognizant of these ongoing and grave acts shall be liable to prosecution individually.

Non-governmental organizations

Non-governmental organizations specializing in these matters or defending parties that act in accordance with their conscience are entitled to lodge a complaint in civil or criminal court.

Immunity from prosecution

The informant's anonymity shall be assured, and s/he shall not be held legally or civilly liable when the accusation was made on justifiable grounds.

Whistleblowers must be safe to make music

James Rose
Canberra Times, 17 February 2004

In 2000, actor Russell Crowe was nominated for his performance as a corporate whistleblower, in the movie *The Insider.* His performance was a real-life dramatisation of the tortuous road taken by an individual who is driven by his convictions to expose Big Tobacco in the US over health issues.

While Crowe received all the plaudits, a supporting role by Al Pacino, who played TV journalist

Lowell Bergman, may have said more about the obstacles whistleblowers face in the modern world. His fight with TV producers and the network owners as he fought to publicise the case, underlined the damage such an exposé can cause and the blockages that exist within business culture. The Big Tobacco companies might have been expected to try to block the scandal, but the TV stations were driven not by direct interest, but by the threats to the very business culture in which they operated: the matrix of their over-lapping business interests. Pacino's [Bergman's] fight was with the mind-set of Big Business as much as with his employers.

In Australia, the National Australia Bank's currency-trading scandal has spotlighted similar weaknesses in our own business culture. Despite the off-the-record dealings going on for apparently some months, it was only when an employee on the bank's Melbourne trading desk blew the whistle on the shady dealings that the bank acted. CEO Frank Ciccutto rightly resigned. However, the question remains: What would have happened if the whistleblower had kept the whistle in the drawer? The bank itself says that its systems would have picked up the problems, but the fact is that they did not. A related question is, therefore: How often does a company act immorally or even illegally, and is allowed to get away with it because no-one is there to blow the whistle?

Whistleblowers are not encouraged in Australia. There is no federal law. None of the state Acts have resulted in any convictions over the vilification or a failure to protect whistle-blowers, despite the fact that many have lost their jobs or been ostracised and even abused. Most legal professionals don't have confidence in the legislation to pursue convictions.

This compares poorly with other countries, such as the US and Britain. The US probably has the most advanced legislation, having been bolstered by the Sarbanes-Oxley Act of 2002, which focused on a range of corporate-governance issues. There, the discovery of business scandals such as the Enron and WorldCom crashes, which inspired Sarbanes-Oxley, are indebted to inside whistle-blowers. As a sign of the value of whistleblowing, in 2000 [2002] *Time* magazine named the whistleblowers at Enron, WorldCom and the FBI as its Persons of the Year.

Here, however, things are different. During the HIH Royal commission, it was revealed that a company employee actually informed the industry regulator, the Australian Prudential Regulatory Authority, of improprieties at the company, but was ignored.

The inability of Australian regulators, governments and the business sector to fully sanction good internal disclosure mechanisms is not without cost. Fraud across all these areas is a massive drain on our economy. No real figures exist for the total costs of fraudulent behaviour, but Kim Sawyer, from the University of Melbourne, recently wrote that it is as high as $20 billion annually.

While legislation may be important, it is more likely that corporate culture in this country is the biggest roadblock for whistleblowers. The relative smallness of the corporate sector, and the limited gene pool from which senior managers and company directors are drawn, undermines the possibility of a more open and progressive corporate culture.

Further down the ladder, rank-and-file employees are feeling the pressures of a more aggressive and time-stressed workplace, and are in fear of losing their jobs, or their place in the workplace hierarchy, in the pursuit of a potentially lost cause.

At a more basic level, the label of "dobber" is one which carries a particular stigma in Australia, where mateship is such a prevalent, if misunderstood, value.

The pressures to conform in the small world of the Australian corporate sector may indeed be a bigger problem than the paucity of good legislation. Big Business is a tightly controlled club of mostly male, privately schooled, managerial Brahmins. This tiny group is most influential in setting the parameters of corporate culture in this country.

It should be remembered that as more non-profit groups and government bodies become corporatised, the ability of this small band of corporate cloud-dwellers to have an impact on cultural development in all organisations is enhanced.

Until corporate culture can take some deep breaths and look at itself more truthfully, the incidences of NAB, not to mention Ansett, HIH or even Enron, proportions will be on the rise. The space for whistleblowers to make their music needs to be made safe and secure, and out in the open. That's as much about ourselves and our culture as about legislation.

James Rose is founder and executive director of corporate ethics and governance consultants Integrative Strategies.

Bribery and international mutual legal assistance

A hypothetical concrete case for training: case study for discussion in Workshop 3B

By Bernard Bertossa
Former Prosecutor General
Geneva, Switzerland

(ADB/OECD Anti-Corruption Initiative for Asia-Pacific
4th regional anti-corruption conference for Asia and the Pacific, 2003)

In 1995, the Ministry for Economic Affairs of Briberyland decided to replace entirely its obsolete information technology equipment. After receiving bids from a number of foreign companies, the Ministry's administrator awarded the contract to the American firm Smith Corp for an amount of US$75 million. The new information technology environment was installed in March 1996, and the Ministry paid Smith Corp the agreed amount.

In April 1996, the public prosecutor of Briberyland received a letter from the Indian company Delhi Corp, which had also bid for the contract. Delhi Corp informed the public prosecutor that Smith Corp had been awarded the contract because it had paid commissions. It gave the name of "John", an employee in the Ministry, as the person who had received these payments.

The public prosecutor initiated an investigation of John, which showed that he enjoyed a lifestyle above what his government salary could possibly provide. However, there were no suspicious funds in the only bank

account that John held in Briberyland. But during a search of John's house, the police did discover the business card of a representative of the BSA Bank in Zurich, Switzerland.

After sending letters rogatory [making a request through a foreign court to obtain information] to the Swiss authorities, the public prosecutor learned that John did not, in fact, have an account at the bank. However, his name did appear as having signatory authority over an account opened by a registered company, Fraud Ltd, headquartered in Nassau, Bahamas, with the BSA's subsidiary in Geneva, Switzerland. The beneficial owner of this account was an individual known as "Pablo", an independent foreign exchange broker operating in Briberyland. This account had been opened in January 1996. In March of that year, it had been credited with a sum of US$7.5 million from a New York law firm. A few days later, US$4 million had been transferred to a bank in London and US$3 million to a bank in Luxembourg.

Informed of these facts, the public prosecutor of Briberyland sent letters rogatory to London and Luxembourg. The replies to these letters brought to light the following:

• The recipient account in London belonged to Oxy Inc, headquartered in the British Virgin Islands. Pablo was the beneficial owner of this account. Since the account had been opened in 1990, large cash amounts, from different origins, had been deposited and had later been transferred abroad. The account currently contained US$10 million.

• The recipient account in Luxembourg had been opened in the name of John's wife. A sum of US$3 million had been the only deposit made to this account. This sum had not yet been touched.

The public prosecutor of Briberyland decided to question Pablo, who admitted that accounts had been opened in Geneva and London and said that he had made these accounts available to some of his customers in Briberyland to enable them to avoid domestic taxes.

The public prosecutor then asked John and his wife to come in for questioning. However, the prosecutor then received news that the Justice Ministry had promoted him to the position of chief judge in another city, effective immediately. A colleague known to be close to those in power, and to have no interest in prosecuting bribery-related offences, replaced the prosecutor. In fact, the new public prosecutor closed the case without further investigation.

Before leaving his post, the former public prosecutor of Briberyland had contacted his Swiss, British and Luxembourg colleagues with whom he had dealt regarding the letters rogatory connected with his investigation, in order to inform them of the situation.

In the meantime, John and Pablo had hired lawyers in Geneva, London and Luxembourg. Arguing that the case had been closed in Briberyland, the lawyers contacted the banks to request that the balance of the accounts be transferred to two separate accounts opened in two different banks in Singapore. Before making the transfers, BSA Bank in Geneva contacted the local prosecutor, who decided to initiate his own criminal proceedings for the crime of money laundering.

The prosecutor of Geneva ordered the seizure of the account of Fraud Ltd in the BSA's Geneva branch. He then sent mutual assistance requests to authorities in London and Luxembourg, in which he asked that the accounts of Oxy Inc and of John's wife be frozen, and that all documentation concerning these accounts be handed over to him. He also sent letters rogatory to Briberyland in order to obtain a copy of the closed investigation file.

The authorities in London and Luxembourg met these requests, but the new public prosecutor of Briberyland took no action whatsoever regarding the case.

After analysing the bank documents received from London, the prosecutor of Geneva observed that a significant portion of the amounts transferred from the account of Oxy Inc had been transferred to an account with the Fritz Bank in Vaduz, Liechtenstein. After sending letters rogatory, it came to light that this account had been opened in the name of a private company, Briby SA, headquartered in Cyprus. The documents completed when the account was opened had been signed by a lawyer in Vaduz and by the administrator from the Ministry for Economic Affairs of Briberyland.

The prosecutor of Geneva again sent letters rogatory to Briberyland, confirming his initial request, explaining what had been discovered in Vaduz and asking to question the administrator. The new public prosecutor of Briberyland merely replied that the account of Briby SA had been opened at the request of the state and that the funds belonged to Briberyland. The prosecutor of Geneva was asked to stop investigating these funds.

Through unknown sources, the press of Briberyland had been informed of the Swiss request. Articles were published that raised questions about the decision to stop the criminal proceedings initiated in Briberyland.

Training question: What further steps do you think might be taken in this hypothetical case in each of the countries concerned by the events described above?

WBA meets the press

Derek Maitland

Monday February 9 was a very proud moment for me. I sat at one end of a table in the Media Room of the NSW Legislative Council, alongside Whistleblowers President Jean Lennane, Education Officer Peter Bowden, with National Secretary Cynthia Kardell in the audience before us, as Lee Rhiannon, the NSW Greens MP, introduced us as "courageous people" fighting for justice and reform.

That was the moment that launched our first formal Whistleblowers Australia press conference, called to demand a searching public judicial inquiry into the administration of the University of New South Wales, basing the call on the finding of an independent public inquiry.

It also introduced us to the prejudices, idiosyncracies and imperatives of a culture that none of us, even me as a longstanding journalist, had ever really looked into closely: the media. And what we learned will be of pressing relevance to us all in our efforts to raise the profile, status and effectiveness of WBA in the future.

I've been a journalist for a good two-thirds of my life, here and overseas, and while I've covered and digested more press conferences than proverbial baked dinners this was actually the first time I'd ever organized one myself. I was lucky, right from the start, in taking up Cynthia Kardell's advice that we approach Lee Rhiannon as a partner in the project, the Greens MP having served on the UNSW Council.

When she readily agreed, it gave us State Parliament as a dignified and prestigious venue for the meeting, immediate access to the parliamentary press lobby – meaning we didn't have to chase and canvass journalists individually – and it brought us under the very professional wing of Lee Rhiannon's media officer, Cate Faehrmann. What Cate taught us was that to get effective media attention and coverage for your issue or cause, you have to observe the media's rules. And the first rule is: don't dare presume that the ethics and urgency of the issue you're trying to publicise automatically qualifies it for serious media attention.

Cate made it clear right from the start that this was something of a competition, a battle for the attention of people who tend to get old quite young, who, like police in some respects, can't avoid the numbness and creeping cynicism that comes from constant raw exposure to the demands, the pains, the cruelties, injustices and connivances of life.

"You haven't got much leeway in attention span," Cate warned me as I began shaping the conference. "They're cynical. If you can't attract their interest fast, and get your message across to them quickly and simply, they'll turn their backs on you."

I'd wanted to use the press conference not just to call for an independent inquiry into the UNSW but also to formally introduce the NSW office-bearers of Whistleblowers Australia to the press. So I envisaged a gallery format of Lee Rhiannon, Jean, Peter, Cynthia and me, with Lee introducing the issue and each of us handling a different aspect of the need for an inquiry into the university and details of two of the six key whistleblower cases that had prompted our call – Margaret Love's ordeal against rampant nepotism and reprisal at the UNSW's Educational Testing Centre, and the continuing drama of whistleblower complaints of fraud and misconduct against Professor Bruce Hall in the Department of Immunology. I figured we'd each speak for a maximum five minutes.

Cate's advice on this: "Too many people. And too much talk. You'll lose your audience. Cut down the number of speakers, and the amount each one has to say. "

But why should we have considered a press conference in the first place? Why not simply target reasonably friendly, sympathetic individuals in the media and feed them the material and our call for an inquiry?

This worked very well last year when, with the help of Christina Schwerin in Melbourne, I managed to get a prominent feature writer from the *Herald-Sun* to take a look at the conflicting information we had on the controversial Gary Lee-Rogers case. You may recall that Lee-Rogers, a federal cop with the Australian Protective Services (now merged with the Federal Police) contacted Whistleblowers Australia to say he was in fear of his life over his attempts to expose corruption and fraud in the APS. A few weeks later, he was found dead in his bed-sitter, having been beaten up a few days before.

The *Herald-Sun* writer did us proud – a blazing three-page splash under the heading "Did this man know too much?," and the dead man's mother's claim that her son had been murdered as part of a cover-up.

I later rang the reporter in question to tell him I could guarantee a continuing series of "good meaty" stories involving whistleblower exposes of corruption, fraud, maladministration, etc. in government and private industry. I made it clear our relationship would be strictly professional: I knew what a good story was, having been a journalist myself, and would not contact him unless I had something that I knew would interest him.

He replied: "That's fine, but since we ran the Lee-Rogers story, I've been inundated with emails from whistleblowers dumping their entire files and life stories on me. What am I supposed to do with all this?"

It was embarrassing, to say the least, and I had to explain to him that some whistleblowers are so traumatized by their experiences, and the reprisals against them, that they can sometimes swamp people with their files in desperation for a hearing. But I knew it hadn't done our image any good with him.

A few weeks later I rang him with another good tip. We had a regional airline CEO who'd blown the whistle to the federal aviation authority CASA on contaminated fuel and other safety problems, and was now claiming that CASA, instead of rectifying the matter, had turned on him and literally driven him out of business.

My *Herald-Sun* contact agreed it sounded like a good story. A couple of weeks after that, I rang him again to ask how it had panned out. "It's definitely a good story," he said. "But, you know, it takes a lot of time and work to follow these things up." In other words, it appeared he didn't want stories that took more than a couple of phone calls to put together.

I couldn't believe it. I couldn't help thinking what I would have felt as a young reporter if someone had told me they could guarantee any number of good stories on corruption, fraud, maladministration, etc. Whatever the amount of investigative work they took to cover, I would have thought all my Christmases had come at once.

It was this sobering experience, along with a couple of others (one *Sydney Morning Herald* writer told Clara He, one of two whistleblowers with Chinese as a first language in the Professor Bruce Hall affair: "I can't understand a word you're saying," and left the telephone interview at that) that prompted me to try the formal press conference format this year. If it was going to be so difficult tracking down earnest, issue-minded journalists, why not simply let the journalists come to us?

And there was another reason for the press conference idea. I wanted to be able to show the media that, far from being the malcontents, "dobbers" and trouble-makers that I suspect some of them tend to think we are, we're in fact headed by professionals — a prominent psychiatrist, a whistleblower journalist, a lecturer in ethics, for instance — who don't just expose and support whistleblower actions but act as consultants in state and federal whistleblower issues and legislation.

If "dobbers and malcontents" sounds a little dramatic, I can only base it on at least two surprisingly negative potted descriptions of Whistleblowers Australia that have come my way in recent weeks. In one instance, someone said they were "keeping a distance" from WBA because they'd been warned "you're a feral organization"; and in the other, a highly-placed newcomer to our Tuesday WBA support meetings in Sydney, told us they felt the general impression of WBA, among professionals as much as the public at large, was that we're "lunatic fringe."

If that is a general impression, I think it's beginning to change with every major whistleblower story that appears in the press. Andrew Wilkie, the Campbelltown and Camden hospital exposes and even *Time* magazine's naming of three US whistleblowers as "Persons of the Year," have helped cement and support our credentials, showing how important we are to justice and transparency in our society.

When we finally all met at Parliament House on Monday, February 9, I was convinced that a press conference would give the media the opportunity to meet with us, get to know us a little, and clearly see that, far from being the rabid, dreadlocked, body-pierced fringe activists that they maybe think we are, we're serious professionals with an uncompromising social conscience.

Everything was prepared. Press releases had been sent out to the TV, radio and newspapers announcing the conference and the issue, our various background speeches had been radically cut back, and I'd prepared three-page briefings to be handed to the journalists to add the essential background to what we were announcing. As we gathered in a meeting room, Cate Faehrmann had one more important preparation to spring on us.

"Let's rehearse the whole thing. Make sure we've got the message and the timing right,"

Lee Rhiannon recited her short introduction, then Jean, Peter and I went through our speeches. They were still far too long. But now we had time to cut them by a half and still get across what we wanted to say; and I realized how important Cate's insistence on brevity and a rehearsal had been: we were being forced to focus down, step by step, to the bare key points of the issue. No waffling, no fat, no chance of turning off people whose professional lives are ruled entirely by deadlines, suspicion and the clock.

"You'll know if they haven't been turned off if they stay to ask questions," Cate assured us.

A few minutes later, I sat alongside Lee, Jean and Peter facing the media at last, and I must admit that for a veteran, somewhat cynical, journalist myself, I felt a tremendous pride in who we were, what we represented and what we were striving to do. I felt even better when we'd finished our speeches and, instead of getting up and leaving, the journalists stayed to discuss the UNSW issue and ask questions.

It wasn't a packed-out meeting, I must confess. In fact, just before it started I was so nervous that the room was still empty that I had to go and hide for a moment in the toilet. It was only when I returned and saw the camera being set up, and a sprinkling of journalists reading my background briefings, that I started breathing normally again.

But it was a start. We got some coverage on ABC radio and in *The Australian*, and in the *Daily Telegraph* through wire-service coverage from AAP. But more importantly, we met the media, showed them who we are, and started a dialogue.

As I write this, we're planning another press conference in April to coincide with the resumption of the inquest into Gary Lee-Rogers' death. The conference will outline our concern about serious discrepancies that have surfaced in the inquest so far, and expose a series of cases involving police killings of other police and civilians right across Australia which we feel need to be independently investigated.

I think we have a job ahead of us to establish the true WBA profile clearly in the minds of the media and the public, and I think the press conference format, because of its face-to-face setting, is one way we'll achieve it. What I've tried to show in this account is that it's going to take a little care, knowledge and familiarity on our part of the idiosyncrasies, pressures and unwritten rules of the media, as Cate Faehrmann so ably showed us, to make it work.

Derek Maitland is media officer of Whistleblowers Australia.

Tony Douglas Grosser and the 40-hour siege

Catherine Crout-Habel

It remains the longest "siege" in South Australian history, still the longest criminal trial (186 sitting days) despite the notorious and lengthy Snowton/bodies-in-the-barrel/serial murder trial. It is also the first and probably the only time the bomb disposal unit has been used on a human being.

Why?

Tony Douglas Grosser is a police whistleblower who, on 6 September 1991, responded to a public plea from the South Australian Police Commissioner to report known police involvement in drugs and crime. Within ten months Grosser's profitable business was destroyed, he was bankrupt, had false fraud charges put upon him and suffered continual police harassment including death threats. Family and friends were also victimised. After the second conviction for attempted murder of a police officer the fraud charges were dropped, as they could not be substantiated, but not before they were used most effectively as "motive" in the prosecution's case before the jury.

In April 1993 Tony Grosser came upon information that "Adelaide coppers" were to be bombed for locking up Bruno "the fox" Romeo on drug charges. South Australian police responded to this information by unsuccessfully trying to lay bomb threat charges upon Grosser and then by naming him as the informant when interviewing the known criminals he had reported. Death threats were now coming from the drug mafia. Pleas for police protection were denied.

On 2 March 1994 the National Crime Authority headquarters in Adelaide, South Australia, was blown to smithereens and Geoffrey Bowen, a seconded Western Australian Police Officer, was murdered. As it happened, Mr Bowen was one of the two officers responsible for tracking down and jailing "the fox" in WA. Tony Grosser went public and received prominent media coverage. This bombing and murder have still not been solved.

A month later, on 3 May 1994 ,with an arrest warrant gained on false information, a cavalcade of South Australian police descended upon the quiet Barossa Valley town of Nuriootpa to arrest Grosser for failure to appear in court on the "trumped up" fraud charges. They chose not to pull him over on the road to serve the warrant, instead allowing him to travel to his home where they suspected he had firearms and knowing his wife and two babies were present. Without the agreed-to flashing lights and sirens when approaching, and unidentifiable as police officers, Tony Grosser opened fire with warning shots when seeing a "shadowy figure" sneaking up on his back door. A police officer was seriously injured and the 40-hour siege began.

Forced to represent himself in the re-trial, Tony Douglas Grosser argued genuine self- defence and put it to the jury that the behaviour of the police, especially during "the siege," showed murderous intent. He was found guilty again and received the same sentence: 22 years imprisonment with 18 years non-parole. All appeals to the Supreme Court of South Australia have been rejected and Tony Grosser now is seeking leave to appeal before the High Court of Australia. He is, once again, forced to represent himself.

Many people continue to be intrigued by the length of the siege. False information was put to the media. A 2 km cordon prevented them witnessing the events and reporting correctly.

At 3pm on Tuesday 10 May 1994, only five days after the end of "the siege," Tony Douglas Grosser was interviewed on the telephone by William Power of *The Advertiser,* as he wanted the truth to be known. For argued legal reasons, the record of this interview was not put before the jury but is reprinted below for the information of all.

Tony Douglas Grosser's unwavering belief is, "The Truth Will Set You Free" (John 8:32).

Telephone interview between William Gene Power and Tony Douglas Grosser, 10 May 1994

"I am a voluntary patient in James Nash House.

I've got a couple of hundred bullets and fragments in me.

For two days the police wouldn't let me surrender. They wanted me dead.

Every time I talked to them they gave me another volley. They were listening to where I was in the house and as soon as they knew that they let rip.

They have taken all the tapes that I made about the NCA bombing and the NCA knows that. I told them. I gave them a report on that today and they have asked for them from Major Crime.

The coppers had a robot in the house. The robot tried to shoot me three times with a shotgun on it.

The coppers were asking me through a megaphone to give myself up to the robot and when I did, I tried that, it blew the bloody manhole out.

As I poked my head out of the manhole in the roof it fired. It did it again and blew another bloody great hole in the roof.

I came down (at night) and got some supplies and it was going through the house looking for me and kept firing.

I was still able to keep going I had three SKK (rifles) and 2000 rounds of armour piercing ammo from China made by Norinco [he spelt out Norinco].

I wouldn't shoot. I shot for only two of 40 hours it went on and the police shot for the rest.

I fired 1000 rounds in the first two hours and they fired unknown thousands in the next 38 hours.

They (doctors) took a big shotgun pellet out of my head.

I was in constant contact with the police but all they were doing was getting me in a position to shoot.

Every time I moved a huge volley was fired. I moved and then would speak and another huge volley would be fired.

I asked for my mum and father and Mick Skrijel of Digby Victoria to come to the house and I would come out with him or my brother and mum and dad.

Police say they all refused to come out that is bullshit.

I got blinded by teargas.

The major wound is above my left eye.

I can't get out of James Nash House.

I was hit by 40 or 50 bullets and shotgun pellets pieces of fragments from stun grenades and teargas. After the first time I was shot down and lying on the ceiling in the roof.

Bits of metal from the roof also wounded me.

I reckon some of it is pieces of solid shotgun and pieces of stun grenade.

Somebody started shooting at me through a window. It was the police who fired first.

The guns were mine hidden in the roof.

Police searched the house not long back and they were not found in the hiding place in the chimney.

I had three SKKs 20 (full) mags and a full case of ammo. Each mag held 30 rounds 7.62.

All I was trying to do was protect my family.

I didn't know it was the police. All I saw was an armed person shooting at me.

They wouldn't let me give up.

I was for two days in the chimney.

I snuck down to get blankets in between gun blasts.

The police got all the tapes I made about coppers stitching up Perre. The Police Complaints Authority is trying to get them from Major Crime.

Westmacott is doing that.

I have tried to get various lawyers to help me. Peter Waye and Richard Armor but they have all bailed out.

The robot blew a …. great hole in the ceiling right near my head.

I went along with the directions to show myself with my hands up and no gun. I did that and they tried to shoot me.

I talked to her (negotiator) for hours she told me she was 44 years old and she wouldn't tell me her name.

I could have got heaps of cops.

Once the lady negotiator came out from behind the rear of the house near the swings. She was coughing and spluttering (from tear gas) and I could have filled her with holes.

I told them I would put a white jumper on so they could see me.

I went out through the hole (from the tractor) with my hands out in front of me.

The coppers came from behind in the roof and up the ladder and took me down but dropped me the last seven feet.

They dragged me to the lawn and kicked the … out of me.

I got bruises everywhere from that.

Someone came up who was in charge and said cut that out.

At Royal Adelaide I was on the operating table and a cop with the badge number 636 kept patting his revolver saying we are going to finish you, we are going to shoot you.

The police surgeon grabbed and squeezed all my wounds. He put something on my feet which felt like razor blades.

He had a little hammer to test my reflexes and used it on my wounds when nobody else was around.

He ordered all the Royal Adelaide doctors away because he had preference.

I could have shot 10 or 20 coppers no worries.

The ammo would have gone straight through their vests.

The poor bloke I shot I didn't know he was a cop.

He was sneaking along beside the house and I could have blown his head off.

The police had told me if they were coming to my house they would put their sirens on so I would know it was them.

All I saw was this sneaking man with a gun in his hands and shooting at me.

I don't know what he had (type of gun), he was sneaking past the curtains.

I was in the toilet and I was out of there like greased lightning and grabbed a gun and waited in the hall as he aimed into the house and fired six shots before I retaliated.

I then gave him a full magazine (20 shots).

I fired low and he kept shooting so I did.

Lorraine was with me and had a child in each arm and bullets were whizzing everywhere.

She has one blanket for warmth.

She has a six-month old baby and an 18-month old baby.

Tear gas ruined everything.

The police had no reason to come at all.

I had been in hospital (after Monday's court) and faxed the court I was going to a psychiatrist and would attend court when I could.

I had just come home from town (Nuriootpa) and saw all the cops there. He (Norm a big fat cop with a beard) followed me in a white Commodore (he was in the passenger seat) right to my driveway on Moppa Road and he kept going and waved to me. (Lorraine Bailey told me this at hospital after the siege – 7 May 1994 approximately.)

If they had come saying they were cops or had rung me I would have gone willingly.

I have legal aid.

John Clayer is helping me.

Police are trying to force her (Lorraine Bailey) to testify against me but she won't.

Psychiatrist professor Powalski and a lot of shrinks have been here to see me.

The major crime task force interviewed me while I was on the operating table. I won't speak to the cops.

This article has been written on behalf of, and approved by Mr Tony Douglas Grosser, c/o Yatala Labour Prison, 1 Peter Brown Drive, Northfield SA 5085.

Donations, to help with the costs involved in preparing court documents, are most welcome and greatly appreciated. Cheques can be made payable to Tony Douglas Grosser and posted to him at the address above.

Editor's note: Thanks to Cynthia Kardell and Patricia Young for proofreading this issue.

Letters

Protect Australia's integrity and whistle-blower Nathan Moore

A letter to the Prime Minister, 2 February 2004

President Johnson's Commission on Law Enforcement and the Administration of Justice in 1967 warned that, "A drive against organised crime usually uncovers political corruption; this means that any crusader makes many political enemies." Some estimates put the annual cost of fraud to all types of government in Australia as high as $20 billion. Australia needs a crusader. Please bite the bullet and initiate a wide based public inquiry that will protect our economic long term future.

Nathan Moore, key witness to a Senate inquiry into the Defence Force, was bashed after reporting serious drug offences. Respected organisations have expressed concern for his life. Please ensure that he is protected.

A year or so back Gary Lee-Rogers, a whistleblower alleging serious wrongdoing in the Australian Protective Services, made it known that his life had been threatened, and was later found dead. Gary had been bashed. The cause of death is not yet established.

In 1994 Tony Douglas Grosser very publicly alleged corrupt judges and police in South Australia. He was subsequently the target of a 40 hour siege by police during which he and an officer were wounded. Tony is currently incarcerated in Yatala prison serving a 22 year sentence.

In 1978 Mick Skrijel reported large scale drug running, and was later jailed on drug and explosive charges that were rejected by Victoria's Supreme Court. In 1995 David Quick QC, appointed by the government, concluded that the evidence against Mick was fabricated by police officers. Mr Quick's recommendation for a Royal Commission was ignored. Mick was not represented in subsequent proceedings which found against him.

Underlying these and numerous similar events is failure to heed the warnings of Athol Moffitt, former Judge and Royal Commissioner, that sophisticated organised crime was likely to infiltrate public and private hierarchies. His Royal Commission report in 1974 included the following comment:

"There appears to be a very great danger that organised crime will infiltrate this country in a substantial fashion. If it does, there will be little appearance of its arrival and it will be difficult and probably impossible to eradicate it. Its arrival is unlikely to be signalled by the arrival of armed gangsters with black shirts and white ties. More likely it will arrive within the Trojan horse of legitimate business, fashioned for concealment and apparent respectability by the witting or unwitting aid of expert accountants, lawyers and businessmen."

Organised crime shelters behind governments whose lawyers' priority is to protect their employer by raising legal issues that ordinary citizens cannot afford to challenge. Spin doctors claim due process.

Keith Potter

Face-to-face meetings

I have been a member of Whistleblowers Australia for many years and wish to point out a serious weakness with the philosophy of the organisation.

Greed and bullying is rampant in modern society as *all* members, I hope, will agree. I believe that it is expanding exponentially, as fast or faster than the expansion of technology and all labour-saving devices. But when trouble arises we all turn to the courts or politicians. Politicians are useless unless one can convince them that they may not get re-elected if they don't act.

But courts are a different story in spite of the fact that solicitors and barristers are regarded as officers of the court! No judge or magistrate will make a decision or give a ruling without face-to-face discussion and/or evidence. If one or both parties or their legal representatives do not appear in the court room, no decision will take place, on paper or orally.

The courts are justifiably adamant on this point. Yet Whistleblowers Australia does the opposite. No face-to-face discussion except, I now realise, at the National AGM. I congratulate Western Australia on the publication of its AGM draft minutes in the recent January issue of *The Whistle.* I do not recall this being done before. Nor do I recall any notice being given of the AGM. However on this latter matter I may not have seen or received a copy of such notice.

I know that face-to-face discussion is often fraught with difficulties, travel and time cost. I believe that our President, Jeane Lennane is a highly skilled and well educated person and I congratulate her on her re-election. I also believe that she and quite a few members are aware of the difficulty of face-to-face discussion and especially that the human (and animal) brain works faster than computers. Human speech and body signals are dead slow compared to the brain. Therefore the job of chairing face-to-face discussion *and* mutual decision making are extremely difficult. One only has to observe any parliament in the world to confirm this fact. This fact also promotes excessively bullying people to bypass democracy. This happens even in everyday conversation, and even just between two people only. It also causes some people to become violent in response to being simply interrupted.

In spite of these difficulties of face-to-face meetings, there are plenty of simple rules of debate or standing orders. (If an organisation does not have standing orders, they are readily available for adoption by Whistleblowers Australia or other bodies.)

My concluding remark is a question: will Whistleblowers Australia conduct many more face-to-face meetings?

Jon B Phillips

[Editor's comment: The AGM draft minutes published in the January issue were for Whistleblowers Australia, not Western Australia. Previous AGM draft minutes have been published in *The Whistle.*]

Whistleblowers Australia contacts

ACT contact: Peter Bennett, phone 02 6254 1850, fax 02 6254 3755, whistleblowers@iprimus.com.au

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 are held in the Church Hall on the first Sunday in the month commencing at 1:30 pm. (Please confirm before attending.) The July general meeting is the AGM.
Contact: Cynthia Kardell, phone/fax 02 9484 6895; messages phone 02 9810 9468; ckardell@iprimus.com.au
Website: http://www.whistleblowers.org.au/
Goulburn region: Rob Cumming, 0428 483 155.
Wollongong: Brian Martin, 02 4221 3763.
Website: http://www.uow.edu.au/arts/sts/bmartin/dissent/

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

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

Victoria
Meetings 2.00pm the first Sunday of each month, 10 Gardenia Street, Frankston North.
Contacts: Christina Schwerin, 03 5144 3007, christina_schwerin@yahoo.com; Mervin Vogt, 03-9786 5308, mervyn@teksupport.net.au.

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Peter Bowden on his own letter

The following letter was sent to the *Sydney Morning Herald* on 17th December last, a shortened version of which appeared the next morning:

> *The Herald* describes Bill Howard, Finance Manager for HIH, as a whistleblower. It uses the same word, whistleblower, to describe the gallant nurses at Campbelltown and Camden hospitals. Howard is facing many years in jail and has rolled over in a bargain to reduce his sentence. The nurses were acting for the good of us all. The same description cannot be applied to both. Howard had his chance to whistle blow in the public interest when he was with HIH. Now he is just self-interested. The nurses are public-interest whistle-blowers. Peter Bowden.

But was I right? Howard provided inside information which would not have got out without him giving it. This is one definition of a whistleblower. He was also acting in the public interest, another key definition of a whistleblower. His evidence will be used at the trial of Brad Cooper, accused of bribing Howard to obtain favourable treatment of a $6.75m claim against the insurance company. He will also give evidence at the trial of Rodney Adler, facing prosecution for the manipulating the share price of HIH and FAI, insurance companies with which Adler was involved. The Director of Public Prosecutions says that without Howard's evidence, the crown would not have been able to bring these people to trial expeditiously.

And we do not know what was going on in Howard's mind. He may be genuinely sorry for what he has done. Many a whistleblower has acted in the public good for reasons that are not always pure at heart.

On 23 December, the judge gave Howard a three-year suspended sentence, warning him, however, that the custodial sentence could be imposed in the future if Howard did not continue to cooperate.

Do we need different definitions of whistleblowing to distinguish people who roll-over from those who act straight off in the public interest? I — a member of Whistleblowers Australia, incidentally — think we do, but I don't know what the descriptions should be. Could the readers give their opinions?

Whistleblowers Australia membership

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.

The activities of Whistleblowers Australia depend entirely on voluntary work by members and supporters. We value your ideas, time, expertise and involvement. Whistleblowers Australia is funded almost entirely from membership fees, donations and bequests.

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