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

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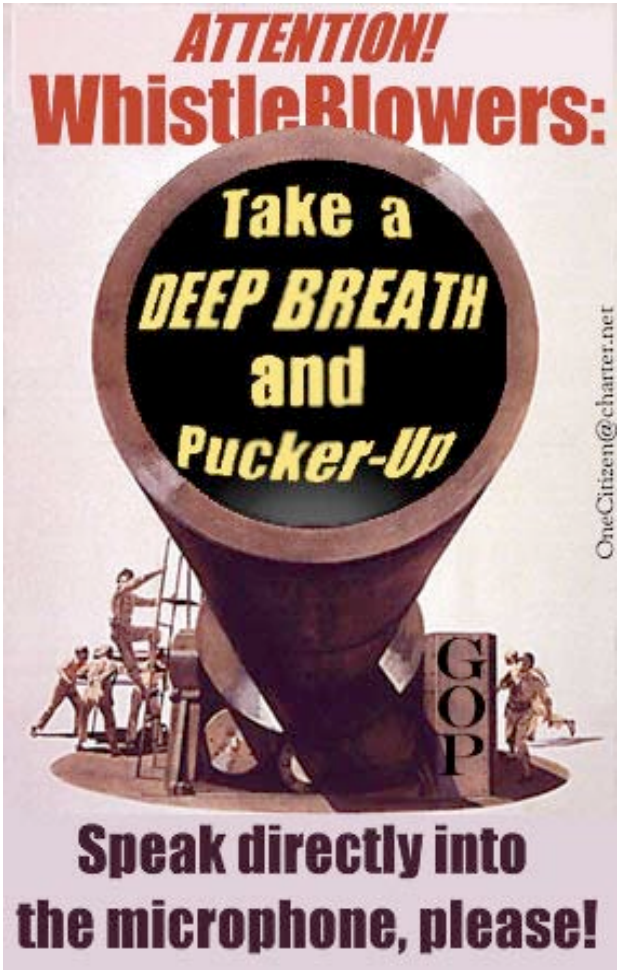

Media watch

Army accused of betraying whistleblowers

Cynthia Banham
Sydney Morning Herald,
6 March 2006, p. 1

The army has been accused of victimising whistleblowers who have tried to expose trainee aviation maintenance workers for forging logbooks.

Federal police are investigating the forgery allegations. And Australian Defence Force top brass have admitted in a parliamentary hearing that they were aware of the claims of forgeries in the 161 Reconnaissance squadron in Darwin, and of the harassment allegations.

But the deputy chief of the army, Major-General Ian Gordon, said no charges had been laid because the supervisor whose signature was allegedly forged had refused to talk to investigators.

That supervisor — Ian Nancarrow, a civilian maintenance worker — has been interrogated by ASIO and the Defence Security Authority and subject to vicious slurs since he first raised concerns about the forgeries by junior soldiers working on the Bell Jet Ranger 206B-1 Kiowa helicopters.

The *Herald* has learned that a number of soldiers who stood up for Mr Nancarrow have also been intimidated. One is seeking a discharge from the army out of anger over the way Mr Nancarrow was treated, while others fear their careers will be destroyed. They say soldiers forged logbooks in an attempt to obtain trade qualifications more quickly. Mr Nancarrow says defence investigators have never questioned him about the forgeries.

In response to the *Herald*'s questions, a Defence spokesman said investigators "did not question Mr Nancarrow concerning the forgery of the documents as the matter was referred to the Australian Federal Police."

The *Herald* has also been told that after the initial allegations were raised, a wider investigation was carried out by the 16th Aviation Brigade into forgeries — and it identified between 12 and 15 cases of soldiers falsifying entries in their personal logbooks. But the senior hierarchy decided to take no action, prompting allegations by the soldiers that Defence is trying to cover up the problem to avoid embarrassing the army.

Asked about this investigation by the *Herald,* a Defence spokesman said this matter had also been referred to the federal police, so he was "unable to provide further comment."

The revelations follow evidence of a dangerous culture of maintenance shortcuts in naval aviation, uncovered by an inquiry into the Sea King helicopter crash that killed nine personnel.

The Defence spokesman said the logbooks were "individual soldiers' work books and are not part of aircraft maintenance documentation." But one soldier, who requested anonymity, told the Herald he believed what had been uncovered in the 161 squadron, and more widely across army aviation, was a serious problem that "undermines the whole integrity of the maintenance system."

"If these guys are prepared to falsify signatures on legal documents for personal gain, when they are working on live aircraft, will they do the same thing — sign up to say they did something they didn't actually do so maintenance gets missed?"

Mr Nancarrow learned of the forgeries after a soldier asked why he was signing off on work by a trainee whose skills were considered inadequate. Trainees need a certain number of signatures from supervisors to get their skills certifications so they can perform maintenance work unsupervised.

Mr Nancarrow, who spent time in the army from 1987 to 1990, found his signature had been repeatedly forged, and reported this to senior officers. At least two other junior soldiers were eventually implicated. Shortly after, Mr Nancarrow found himself — not the forgeries — under investigation.

He has been accused of spying for the Vietnamese Government, of conducting a mail-order bride service from Vietnam, and of being involved in tax fraud — all of which he denies. He was interrogated by ASIO, with Defence Security Authority officers present, and later by the authority. But it would not tell him what he was being investigated for unless he first signed a secrecy document. Mr Nancarrow refused.

He was stood down from his job with the defence contractor Helitech, and eventually resigned last May, after an article about him appeared in The Bulletin. Mr Nancarrow, 39 — who has a Vietnamese wife and two young children — says two of the trainee soldiers involved have now been posted, or shortly will be, to new bases where they will work on Black Hawk helicopters.

At the parliamentary inquiry on Friday, General Gordon told the Northern Territory Labor MP Warren Snowdon: "Yes, a number of those soldiers have been posted to other army units." He said the postings were not linked to the forgery claims.

Mr Nancarrow's treatment led to a co-worker, Sean Wood, who was formerly in the air force, also resigning from Helitech in disgust. "He was treated as a leper by the army guys," Mr Wood said.

One soldier who spoke up for Mr Nancarrow said he could have "done nothing, shut my mouth, left him to get slaughtered, but that's not the sort of person I am. If that's what the Australian Army is, I don't want to be part of it."

Flag whistle blower loses case

Andrew Colley
The Australian, 7 February 2006, p. 30

A former phone card sales executive has lost an unfair dismissal claim in the NSW Industrial Relations Commission after he was sacked for warning colleagues and customers that advertising flags used by his former employer had been found to contain "unusually high" levels of toxic chemicals.

Industrial Commissioner Ian Cambridge ruled that Telecorp

subsidiary CardCall did not behave unfairly when it dismissed Shane Dowling for sending thousands of emails warning phone card retailers and other employees that the flags were a possible health hazard.

Mr Dowling lodged his unfair dismissal complaint with the commission in July.

During the trial the court heard evidence from chemical, and health and safety, experts that prompted the commissioner to order the company to contact Workcover and notify its customers to take care handling the flags.

The commissioner said the high concentration of solvents in the flags was a "serious concern" and CardCall's decision not to warn customers and staff was "disconcerting."

In handing down his final decision last week the commissioner said Mr Dowling's action drew attention away from the flags' potential health impact.

Mr Dowling should have made more effort to follow company procedures or those provided by Workcover NSW, he said.

Mr Dowling told the commission he complained to CardCall management of excessive fumes in the flags early in April.

The court heard that he then emailed Telecorp chief Steve Picton and 30 staff, warning them the company was facing "a very dangerous situation."

On May 5 a chemical testing company advised Mr Dowling that the flags contained "unusually high levels" of chemicals including Isophorone, a suspected carcinogen, and Cyclohexane, which may cause death if inhaled for long periods.

CardCall wrote to Mr Dowling's solicitors on May 12, claiming it had advice that contradicted his concerns and warning him not to send further emails.

The court was told Mr Dowling defied the company's request and sent 1500 emails, prompting CardCall to sack him.

Ron McCallum Dean of Sydney University Faculty of Law said employees need to be wary of pursuing crusades against their employers.

Protection call for informers

Peter Ellingsen
The Age, 6 November 2005

A review of whistleblowers' rights was needed to overcome growing concerns that they are not being properly protected, state Ombudsman George Brouwer said.

On the eve of bringing down the first report of the Office of Police Integrity, Mr Brouwer — the office's director as well as Ombudsman — has signalled the need for whistleblowers, including those within the police and Justice Department, to be given greater protection.

Mr Brouwer is worried that some whistleblowers could be put off by the present law. He has flagged a review so that doubts about the protection afforded to whistleblowers can be removed.

The initiative comes six months after the secret identity of the state's first prison whistleblower was accidentally revealed by the Justice Department, and two months after Police Minister Tim Holding refused to guarantee a protective relocation for the whistleblower who was mistakenly sent 20,000 police files. Both bungles embarrassed the Government and led to calls for better whistleblower protection.

While the changes Mr Brouwer has in mind do not relate directly to the controversies, they address the fears of those prison officers, police and others who worry they will not be protected if they draw attention to corruption and illegality.

His concern is that the time it takes to establish protection under the current protected disclosure and public interest provisions could discourage potential whistleblowers.

"If you are a whistleblower, you assume you have protection," he said. "(But) the way the current legislation operates, sometimes there's a time lag to determine whether disclosure falls within the act. You do need a filtering process, but this creates complexities.

"I want to look at streamlining it to take away the confusion that might be in the whistleblower's mind. They are under a lot of psychological pressure. We need to make it clearer to them they are protected."

In the four years the whistleblower law has been in place, 30 of the 79 disclosures made have been assessed to be protected or in the public interest.

Mr Brouwer said he would consider recommending a law change to the Government to ensure greater protection.

Mr Brouwer, who will table the first annual report of the new police watchdog in about 10 days, also wants to tighten up the 31-year-old Ombudsman's Act. "At an appropriate time, I might suggest to government a few things to streamline the legislation," he said.

The Ombudsman's office last year dealt with 16,000 inquiries, up 16 per cent on the year before. Most were lodged by prisoners, who, in more than half the cases, saw a resolution in their favour. The biggest area of concern is prisoners' property, and most complaints came from the privately run Port Phillip Prison.

Investigations have found flaws in the way prisoners' possessions are stored, and Mr Brouwer intends to recommend they be sealed in containers rather than cardboard boxes or plastic bags.

While the Ombudsman has broad powers to investigate alleged misbehaviour, some bureaucracies have tried to block his work, either by refusing access or using lawyers as middlemen. "Sometimes it is because they want to hide things," Mr Brouwer said. "But we put the foot down and let them know in no uncertain terms it is our job to get to the bottom of complaints."

Mr Brouwer mentioned VicRoads and its registration practices, and the Medical Practitioners Board of Victoria, as cases of obstruction. He has put forward the option of his office, and that of other independent watchdogs, such as the Auditor-General, being grouped together into an integrity branch of government.

"I do flag … the concept of an integrity branch as a fourth arm of government, which is separate from the executive, the judiciary and parliament, which may be an option to be considered in the future," he said in his annual report.

He said this week such an arrangement could prevent potential conflict of interest, notably in cases where watchdogs are investigating complaints against politicians.

Who will blow the whistle before we attack Iran?

Ray McGovern
www.truthout.org, 13 February 2006

The question looms large against the backdrop of the hearing on whistleblowing scheduled for tomorrow afternoon by Christopher Shays, chair of the House Subcommittee on National Security, Emerging Threats and International Relations. Among those testifying are Russell Tice, one of the sources who exposed illegal eavesdropping by the National Security Agency, and Army Sgt. Sam Provance, who told his superiors of the torture he witnessed at Abu Graib, got no satisfaction, and felt it his duty to go public. It will not be your usual hearing.

I had the privilege of being present at the creation of the international Truth-Telling Coalition on September 9, 2004 and of working with Daniel Ellsberg in drafting the coalition's "Appeal to Current Government Officials" to put loyalty to the Constitution above career and to expose dishonesty leading to misadventures like the wars in Vietnam and Iraq. Whether or not encouragement from the Coalition played any role in subsequent disclosures, we are grateful for those responsible for the recent hemorrhaging of important information — from the "Downing Street Minutes," showing that by summer 2002 the Bush administration had decided to "fix" intelligence to "justify" war on Iraq, to disclosures regarding CIA kidnappings, secret prisons, and state-sponsored torture.

As former FBI translator Sibel Edmonds, who leads the National Security Whistleblowers Coalition, keeps reminding us, "Information is the oxygen of democracy." And with this administration's fetish for secrecy and our somnolent Fourth Estate, we would likely all suffocate without patriotic truth-tellers (aka whistleblowers).

Whistleblowing and Vietnam

There are several times as many potential whistleblowers as there are actual ones. I regret that I never got out of the former category during the early stages of the Vietnam War, when I had a chance to try to stop it. I used to lunch periodically with my colleague Sam Adams, with whom I trained as a CIA analyst and who was given the task of assessing Vietnamese Communist strength early in the war. Sam proved himself the consummate analyst. Relying largely on captured documents, he concluded that there were twice as many Communists (about 600,000) under arms in the South as the US military there would admit to.

Adams learned from Army analysts that Gen. William Westmoreland had placed an artificial cap on the official Army count rather than risk questions regarding the prospects for "staying the course" (sound familiar?). It was a clash of cultures, with Army intelligence analysts following politically dictated orders, and Sam Adams aghast. In a cable dated August 20, 1967, Westmoreland's deputy, Gen. Creighton Abrams, set forth the rationale for the deception. The new, higher numbers, he said "were in sharp contrast to the current overall strength figure of about 299,000 given to the press." Noting that "We have been projecting an image of success over recent months," Abrams cautioned that if the higher figures became public, "all available caveats and explanations will not prevent the press from drawing an erroneous and gloomy conclusion."

When Sam's superiors decided to acquiesce in the Army's figures, Sam was livid. He told me the whole story over lunch, and I remember a long silence as each of us ruminated on what might be done. I recall thinking to myself, someone should take the Abrams cable down to the *New York Times* (at the time an independent newspaper). The only reason for the cable's "SECRET EYES ONLY" classification was to hide the deception.

I adduced a slew of reasons why I ought not to: a plum overseas assignment for which I was in the final stages of language training; a mortgage; the ethos of secrecy; and, not least, the analytic work (which was important, exciting work, and which Sam and I both thrived on). One can, I suppose, always find reasons for not sticking one's neck out. For the neck, after all, is a convenient connection between head and torso. But if there is nothing for which you would risk your neck, it has become your idol, and necks are not worthy of that. I much regret giving such worship to my own neck.

As for Sam, he chose to go through grievance channels and got the royal run-around, even after the Communist countrywide offensive at Tet in January-February 1968 proved beyond any doubt that his count of Communist forces was correct. When the offensive began, as a way of keeping his sanity, Adams drafted a cable saying, "It is something of an anomaly to be taking so much punishment from Communist soldiers whose existence is not officially acknowledged." But he did not think the situation at all funny.

Dan Ellsberg steps in

Sam kept playing by the rules, but it happened that — unbeknownst to Sam — Dan Ellsberg gave Sam's figures on enemy strength to the (then independent) *New York Times,* which published them on March 19, 1968. Dan had learned that President Lyndon Johnson was about to bow to Pentagon pressure to widen the war into Cambodia, Laos, and up to the Chinese border — perhaps even beyond. Later, it became clear that his timely leak — together with another unauthorized disclosure to the *Times* that the Pentagon had requested 206,000 more troops — prevented a wider war. On March 25, Johnson complained to a small gathering, "The leaks to the *New York Times* hurt us … We have no support for the war … I would have given Westy the 206,000 men."

Ironically, Sam himself played by the rules; that is, until he learned that Dan Ellsberg was on trial for releasing the Pentagon Papers and was being charged with endangering national security by revealing figures on enemy strength. Which figures? The same old faked numbers from 1967! "Imagine," said Adams, "hanging a man for leaking faked numbers," as he hustled off to testify on Dan's behalf.

Ellsberg, who copied and gave the Pentagon Papers — the 7,000-page top

secret history of US decision-making on Vietnam — to the *New York Times* and *Washington Post,* has had difficulty shaking off the thought that, had he released them in 1964 or 1965, war might have been averted.

Like so many others, I put personal loyalty to the president above all else — above loyalty to the Constitution and above obligation to the law, to truth, to Americans, and to humankind. I was wrong.

And so was I, it now seems, in not asking Sam for that cable from Gen. Abrams. Sam, too, eventually had strong regrets. When the war drew down, he was tormented by the thought that, had he not let himself be diddled by the system, the left half of the Vietnam Memorial wall would not be there, for there would be no names to chisel into such a wall. Sam Adams died prematurely at age 55 with nagging remorse that he had not done enough.

In a letter appearing in the (then independent) *New York Times* on October 18, 1975, John T. Moore, a CIA analyst who worked in Saigon and the Pentagon from 1965 to 1970, confirmed Adam's story after Sam told it in detail in the May 1975 issue of *Harper's* magazine:

> My only regret is that I did not have Sam's courage … The record is clear. It speaks of misfeasance, nonfeasance and malfeasance, of outright dishonesty and professional cowardice. It reflects an intelligence community captured by an aging bureaucracy, which too often placed institutional self-interest or personal advancement before the national interest. It is a page of shame in the history of American intelligence.

Next challenge: Iran

Anyone who has been near a TV in recent weeks has heard the drumbeat for war on Iran. The best guess for timing is next month.

Let's see if we cannot do better this time than we did on Iraq. Patriotic truth tellers, we need you! In an interview last year with *US News and World Report,* Republican Senator Chuck Hagel said that on Iraq, "The White House is completely disconnected from reality … It's like they're just making it up as they go along."

Ditto for an adventure against Iran. But the juggernaut has begun to roll; the White House/FOX News/*Washington Times* spin machine is at full tilt. This is where whistleblowers come in. Some of you will have the equivalent of the Gen. Abrams cable, shedding light on what the Bush administration is up to beneath the spin. Those of you clued into Israeli plans and US intelligence support for them might clue us in too. Don't bother this time with the once-independent Congressional oversight committees; you will have no protection, in any case, if you choose that route — CIA Director Porter Goss's recent claims to the contrary notwithstanding. Nor should you bother with the once-independent *New York Times.* Find some other way; just be sure you get the truth out — information that will provide the oxygen for democracy.

Better late than never?

Don't wait until it's too late — like Dan Ellsberg and Sam Adams did on Vietnam. Any number of people would have had a good chance of stopping the Iraq war, had they the courage to disclose publicly what they knew *before* it was launched.

One of them, Paul Pillar, was national intelligence officer for the Middle East from 2000 to 2005, and has just published an article in *Foreign Affairs* titled "Intelligence, Policy, and the War in Iraq." It is an insider's account of his tenure and the "disturbing developments" he witnessed on the job. In substance it tells us little more than what we have long since pieced together ourselves, but it provides welcome confirmation.

Sadly, Pillar speaks of the politicization of intelligence as though it were a bothersome headache rather than the debilitating cancer it is. Interviewed on National Public Radio, he conceded without any evident embarrassment that, with respect to Iraq, "intelligence was not playing into a decision to be made. It was part of the effort to build support for the operation." So, in the vernacular of Watergate, Pillar's article is "modified limited hangout," in which he pulls many punches. Nowhere in Pillar's 4,450 words, for example, appears the name of former CIA director George Tenet, whom he now joins at Georgetown University.

It should qualify as another "disturbing development" that Pillar parrots the administration's default explanation for what drove its decision to topple Saddam: "namely, the desire to shake up the sclerotic power structures in the Middle East and hasten the spread of more liberal politics and economics in the region." The word "oil" appears once in Pillar's article: "military bases" and "Israel" not at all. He splits hairs to be overly kind to former Secretary of State Colin Powell. "To be fair," writes Pillar, "Secretary Powell's presentation at the UN never explicitly asserted that there was a cooperative relationship between Saddam and al-Qaeda." Pillar seem to have forgotten how Powell used that speech to play up "the potentially more sinister nexus between Iraq and the al-Qaeda terrorist network, a nexus that combines classic terrorist organizations and modern methods of murder," and spoke of a "Saddam-bin Laden understanding going back to the early and mid-1990s."

Truly disturbing

Generally absent is any sense of the enormity of what the Bush administration has done and the urgent imperative to prevent a repeat performance. With no perceptible demurral from inside the government, George W. Bush launched a war of aggression, defined by the Nuremberg Tribunal as "the supreme international crime, differing from other war crimes only in that it contains within itself the accumulated evil of the whole" — like torture, for example.

If this doesn't qualify for whistleblowing, what does? Let us hope that administration officials, or analysts — or both — will find the courage to speak out loudly, and early enough to prevent the "disconnected-from-reality" cabal in the Bush administration from getting us into an unnecessary war with Iran.

Ray McGovern works with Tell the Word, the publishing arm of the ecumenical Church of the Saviour in Washington, DC. A veteran of 27 years in the analysis division of CIA, he now serves on the Steering Group of Veteran Intelligence Professionals for Sanity (VIPS).

Letters and articles

An open letter from Whistleblowers Australia

The Hon J.W. Howard, MP
Prime Minister
Parliament House
Canberra ACT

October 30th 2005

Whistleblowers Australia is a national organisation dedicated to the protection and support of whistleblowers and the promotion of honest, transparent and fully-accountable government and private organisations.

We do not foster whistleblowing per se, but see our role as helping those who expose corruption, maladministration and other wrongdoings in the public interest, and who are consequently and wrongfully harmed for their efforts.

We are seeing growing and compelling evidence of government and corporate secrecy and a serious drift from public accountability, as well as increasing manipulation of the media. These developments cause people of good conscience to 'blow the whistle' because that is the only way perceived misconduct can be exposed in the public interest.

Indeed, our organisation is increasingly being called upon to assist concerned citizens who are suffering retribution and victimisation because they sought to disclose matters in the public interest. These citizens are doing nothing more than exercising their implied constitutional rights or human rights for the general welfare of society.

We are therefore concerned about your government's proposed anti-terrorism legislation and the prospect that the law will be used or misused to further limit public-interest disclosures. We understand the need for strong measures to protect the nation from terrorism, but we fear that the right of citizens to disclose public or private misconduct will be damaged by your anti-terrorism laws. This would diminish even further the right of Australians to disclose wrongdoing.

Furthermore, other aspects of your anti-terrorism measures give rise to concern that secret arrests and detentions, or the threat thereof, could be used to deter whistleblowers from exposing administrative abuses or other acts of public service misconduct.

Therefore, to assist us in understanding how this law may affect whistleblowing, we ask the following:

Does the legislation ensure that those who claim to disclose information in the public interest that will not be detrimental to the safety or wellbeing of the nation be given the opportunity of independent judicial review before they are prevented from making such a disclosure?

Does the legislation ensure that those who claim to have been improperly silenced by means of arrest, detention, threat of penalty/harm, or threat to employment

i) receive full notice of the grounds on which they have been silenced, and

ii) have the right to judicial review of any such action?

Does the legislation ensure there will be no restrictions on the expression of political, ethical or moral opinions that do not incite hatred or harm to the public or the nation?

What measures will be taken to ensure that criticism or comment about public institutions (e.g. intelligence or security services, the defence forces, law enforcement, government agencies and public administration) will not be deemed to be 'seditious', thus enabling bureaucrats to use the legislation to cover up their misconduct by imposing sanctions on whistleblowers?

We trust your answers to these questions will guarantee that there will be no further deterioration of citizens' rights to disclose acts of misconduct in the public interest. We look forward to your answers and would appreciate your response as soon as possible.

Yours faithfully,
Jean Lennane, President
Whistleblowers Australia Inc

A reply to this letter, dated 28 March, was signed by Philip Ruddock, the federal minister responsible for national security. The reply gives no substantive response to the issues raised in WBA's open letter.

RU486 — the untold story

Mary Lander

I am a whistleblower in the Commonwealth Government and was the catalyst in terms of the current debate on RU486. The Senate Inquiry is about the legal status of the drug which, I might add, has a wide range of medical applications. While it was for personal reasons that I came to do some research on the drug I then also became aware of the fact that the drug could also help thousands of other people for a range of debilitating and in some cases life-threatening medical conditions and that it would be in the interests of public health to pursue the issue of the drug's availability. As I am also, co-incidentally, a Commonwealth Public Servant and have been victimised as a whistleblower on a previous occasion (in that instance after I wrote to the Prime Minister making disclosures about politically sensitive issues) I knew that it would be impossible to achieve anything by raising the issues internally due to the politically sensitive nature of this particular drug.

I then made the decision to approach Senator Allison about the wider range of uses for the drug, provided the research material I had sourced which then prompted her to raise the issue in parliament.

The transcript of Senator Allison's original speech is available online: "Matters of public importance — Mifepristone," http://www.democrats.org.au/speeches/index.htm?speech_id=1700&display=1

Following this, the Democrats then started a campaign to overturn the existing legislation (which prohibits the importation of the drug) and a proposed amendment was tabled in parliament. The issue has since developed a momentum of its own.

However, little has been said of the drug's other uses in the media because "abortion politics" just simply takes over. The existing legislation prohibiting the importation of the drug for use as an abortifacient also has enormous ramifications for those seeking the drug for other medical applications given the regulations and

restrictions that were imposed by the Government after that legislation was introduced. While most of the media and controversy has centred around the drug's use as an abortion pill, other uses for the drug have not been highlighted so with the help of the ABC and my US contacts I arranged for this interview. The transcript of that broadcast is available online: "Cancer patients caught in middle of abortion pill debate," http://www.abc.net.au/7.30/content/2006/s1554500.htm

While I did not originally intend to go public with my own story, I could see that the other important uses for the drug would be left behind in this debate so I felt it was important that the issue was raised publicly with the view that it might help to exert some pressure on the government and the parliament to effect the necessary changes.

My submission to the Senate Inquiry on RU486 details the relevance of the drug in progesterone dependant tumours and cancers and outlines the difficulties in obtaining the drug even for non-abortifacient uses based on my own personal experience and includes relevant supporting documentation which would otherwise not have been made possible. While the legislation introduced 9 years ago prohibited the importation of the drug for use as an abortifacient only, the Government took it upon themselves to apply such stringent restrictions and regulations to control access to the drug that even anyone trying to access it for other uses would find it virtually impossible to do.

My submission to the Inquiry explains the relevance of RU486 in other medical applications such as tumours and cancers that are progesterone dependant and highlights the failure of the system the Government has put into place, through which they "claim" to have enabled access to the drug for non-abortifacient uses. My submission is available on the parliamentary website, at http://www.aph.gov.au/senate/committee/clac_ctte/ru486/submissions/sub712.pdf

This has taken an exhaustive amount of effort on the part of many but it is quite genuinely in the interests of public health to have raised the issue so I am pleased that in some way I was able to contribute. My personal thanks to Senator Allison for having the courage to take on this enormous challenge and breadth of vision to pursue the issue in the interests of public health.

While they are a comparatively small team and their resources are limited the Democrats, in my view, are the "quiet achievers" of the Senate. I hope that the public consider this and regard their role as an important one in ensuring that the necessarily checks and balances are kept on Government because that is something that is clearly needed. The Democrats are also the only party that have pursued issues relating to the introduction of legislation to protect whistleblowers in Commonwealth Government. That is something the Commonwealth Government is clearly not interested in doing.

Mary Lander is a member of Whistleblowers Australia.

Sham peer review

John Wright

This term refers to a form of enquiry by hospital managements into doctors' conduct. The enquiry usually occurs without any component warranting referral to a licensing authority. For convenience, a reviewed doctor is referred to here as "he."

Inexplicably and unfortunately, courts are reluctant to interfere with decisions taken by hospital boards. Contracts may be broken without demonstrable or existing reason. With accusers having immunity from defamation liability, such as by "qualified privilege," peer-review — originally meant to resolve hospital care problems in a fair and confidential manner — has become a weapon to indiscriminately damage the careers of targeted doctors. In their extreme form, procedural abuse includes well-publicised, summary suspension "to preserve public safety." That is a professional death sentence — an execution equivalent.

"Sham" (bad-faith) peer review by hospitals was first recognized more than 20 years ago. Since then, it has grown to plague proportions, particularly in the United States. It may occur in job seeking and in job retention, as well as in applications for grants, submission of articles for publication and in qualifying for distinctions. It is not confined to medicine where a retrospective study of records is the usual tool of attack.

The usual sequence of events is: a doctor expresses concern about safety standards, and/or endangers the financial comfort of rivals (for example, drawing attention to excessive servicing or improper billing practices); retaliatory claims of the doctor's incompetence are made; he is suspended while these (but not his complaints) are investigated by the hospital; instead of a bona fide peer review of matters, a sham review occurs, managed by the hospital with biased witnesses; summary dismissal follows; the complainant loses reputation, job and security.

In a typical case of sham review (unlike a criminal trial, for example), the following are *not* mandatory: fair warning; immediate provision of particulars of complaint; a presumption of innocence; rigorous exclusion of malice, politics and conspiracy; proper procedure and rules of evidence; access to supportive witnesses; cross-examination of accusers; ensured "peer" status of critics (their credentials may be actively and knowingly falsified); legal representation; keeping of minutes of proceedings (they may be secret, suppressed, or "lost"); reporting of findings and reasons; investigation of a doctor's original complaints and of systemic institutional faults.

Lest it is assumed that "only bad doctors get in trouble and it won't happen to me," most investigated doctors have had no previous criticisms made of them. Some reports suggest that up to 10,000 death-dealing incidents may occur in Australian hospitals yearly. One in every 5-10 Australian doctors reports a significant medical mishap to an indemnifier every year. Such events are inordinately frequent in some specialties.

There is no professional body in Australia concerned, competent, or substantial enough to provide expert support for doctors facing such a devastating life event as "bad faith peer review" and/or summary dismissal. Those are far worse than any medical negligence claim. The latter

can be professionally defended; sham review cannot. Hospitals know that sympathetic colleagues are disinclined to become involved for reasons of their own safety. They take notice of penalties.

Sham review is a pernicious tool freely available to threatened hospital managements and fearful doctors. They often work in collusion to avoid enquiries into their performance and safety. Many of the egregious deficiencies that plague every healthcare system in Australia flow from the concealment of personal antagonisms and fears of exposure that masquerade as good governance. Whistleblowing threatens that culture and must be destroyed quickly and, if necessary, violently. The ultimate sufferers are always patients at large.

Dr John Wright, a retired surgeon, is a member of Whistleblowers Australia.

Technology and the whistleblower

Darcy O'Neil

As the meeting comes to a close, your boss smirks with a self-assured arrogance. He then says that you should seriously consider his offer, because he has it on good authority, that there may be a very localized downsizing in your department. Wouldn't it be nice to smirk back and just say "no thanks."

This scenario plays out more often then most people realize. With all of the recent business and government scandals there were a lot of people who knew that books were being cooked, laws being broken and the health of the public being put at risk, just to keep profits high and investors content. Many people felt that there was nothing they could do against powerful executives and corrupt bureaucrats. The credibility of a low level employee compared to that of a "successful" corporate executive is a huge hurdle to overcome. Also, corporate lawyers are there to defend the company, even from internal hazards. So, once a person decides to speak up, they must be prepared to have their credibility brutally attacked and the onslaught of legal preceedings from an all-star team of corporate lawyers.

Just the thought of legal proceedings can stop a person from making the ethical choice. It's easy for people to be vilified by their employer, at which point the credibility of the person speaking out is destroyed. How is it possible for a single person to fight a company or government with infinite resources? Many years ago, it was practically impossible. However, the "digital revolution" may have changed the balance of power. For a "whistleblower" to be effective they need proof of wrongdoing and a method to communicate those issues to the public. The availability of compact electronic devices such as digital audio recorders and digital cameras allow an individual to document many of the issues and bring the power back to the whistleblower.

The first piece of technology that should be in every whistleblower's repertoire is a digital audio recorder. These devices are so small that they can be put in a shirt pocket without being noticed. Once you decide to "blow the whistle" you should start recording all of your conversations. Keep a log of the items discussed, so that you can refer to the appropriate recording when needed, otherwise you can spend hours going back over the content. The best part is that these devices are not expensive. A digital voice recorder costs about $100, or many MP3 players have a microphone built into the device, so they can be used to record conversations.

Another device that is very handy is a voice modem with telephone recording software. This will allow you to, hook up your phone, and record any conversations that occur over the phone. If you get fired before you have all the evidence, sometimes telephone conversations, with the people in power, can help to document important facts, because people very rarely think they are being recorded and say things that they probably should not have.

Make sure you check your local laws regarding conversation recording. In most places it is legal to record with one-party consent. One-party consent means that if you are involved in the conversation, you do not need to notify the other parties that you are recording the conversation. In Canada, one-party consent is the law. In the United States it is a little more complicated, as some states have their own regulations. You can refer to a recording law chart (http://www.snakeoil.ca/docs/recordinglaw.html) to determine what laws affect you. If in doubt, speak with a lawyer.

The third device every whistleblower should have is a digital camera. Many times the violations are in manufacturing or packaging, which could be a public health concern. These can be very hard to document and prove, since the paper records may be manipulated. A picture says a thousand words though, and will help authorities uncover doctored documents. When taking pictures be very cautious as most companies prohibit cameras on their premises. Many cell phones are now equipped with digital cameras, so they are easier to conceal. Take as many pictures as you can and try to prove the date you took them. Some cameras have a date stamp feature, even though this is easy to manipulate. The best option is to take a picture of the daily newspaper beside the offending subject. This is very hard for lawyers to argue against and disprove that the violations did occur on that particular date.

The last piece of equipment needed is a computer. When the authorities begin investigating your complaint, you will need to produce your evidence such as documents pointing to the issues. Most corporations are moving towards a paperless environment, which means that these documents will only be accessible by a computer. The other important part your computer plays, is to backup all of those images and audio recordings. Make sure your computer has a CD writer or DVD writer. Take these backups and put them somewhere secure, like a bank deposit box.

One area of concern is the removal of corporate documents from the office. This can violate many legal agreements you may have signed. If you are worried about this, there is a very simple solution. Backup all of the evidence files at work and stash them somewhere in the office. In the ceiling or in ductwork is a great place. Basically, anywhere nobody ever looks. When it is time to produce these

documents, simply tell the authorities that you have stashed them in a safe place at the office. The evidence is kept safe and you haven't violated any agreements, a win-win situation.

In the future, companies may begin banning digital devices from the workplace for the exact reasons being discussed here. However, if we are persistent, it may go the other way and corporate behaviour may change, which is the ultimate goal of being a whistleblower. The days of "plausible deniability" and "disgruntled employees" are disappearing quickly.

Darcy O'Neil is a chemical technologist who became a pharmaceutical whistleblower. His experiences, including the evidence, legal threats and decisions can be found at http://www.snakeoil.ca

The "Gang of Six"

How the neo-liberal alliance of governments and business is thumbing its nose at us all

Derek Maitland

If we ever needed another glaring example of global neo-liberalism, or neo-fascist economics, assembled in full force with all its pomp, power, paranoia and complete disregard for general public opinion, then the two-day Asia-Pacific ministerial meeting on climate change in Sydney in January certainly provided it.

There they were, leaders or representatives of six of the world's richest, most polluting, nations, led by the USA and Australia, meeting not just to ratify their avowed opposition to the Kyoto Treaty on global action against climate change, but to weaken or destroy it altogether; meeting to thumb their noses at the rest of the world on an issue that's possibly the biggest peril, aside from nuclear devastation, that humankind will face in the future.

They met behind closed doors in a downtown harbourside area which, thanks to the "draconian" anti-terrorism legislation imposed by the Howard government and the NSW Labor state government, had been "locked down" — in other words, completely quarantined — by security forces.

They met with the heads of the biggest, richest and most powerful energy, mining and construction corporations in the world, all of whom, like them, have a vested interest running into many billions of dollars in opposing and ignoring popular support for immediate research and development of non-fossil energy options.

Their talks were not only held well away from public scrutiny, they were also closed to environmental groups, and not just the activists but those who've been providing the expert research citing climate change as a peril and supporting what's now becoming a worldwide popular demand for real action against global warming.

Prime Minister Howard's summation pointed to the underlying nature of the talks. "The [global carbon emission reduction] goals cannot be achieved without industry," he declared. His Environment Minister, Senator Ian Campbell, who a week or so before had been crowing publicly at what he appeared to have misinterpreted as the collapse of the Kyoto accord, told ABC's "7.30 Report": "I've always said that getting the market to drive [the campaign for carbon emission reductions] is the best way." In other words, business knows best. But now, Campbell was saying that their agreement was "designed to complement Kyoto."

All in all, it was little wonder that the environmental action campaign slammed the summit as one big high-level business negotiation. As Kate Faehrmann, director of the Nature Conservation Council, saw it: "The so-called Asia-Pacific Partnership is essentially a coal pact that allows Australia to do next to nothing to stop climate change."

But quite apart from what this unholy alliance of neo-liberal politicians and energy giants came up with, and, naturally it wasn't anything like an immediate global emergency program to reduce carbon emissions, the summit typified the almost blatant extent to which our business and political leaders are cutting us all off from the debate and decision making process of our democracies.

We've been getting accustomed in recent years to this sort of rarefied, high-security arrogance with the Group of Eight economic summits — now a familiar pattern of global decision-making behind heavily armed and armoured police lines, concrete barriers and razor-wire, with a photocall of delegates in increasingly silly local "national" costumes and John Howard preening himself like a runt of the litter at Crufts alongside Tony Blair and George W. Bush.

What's become most familiar about them, of course, is that major decisions are being made which affect the lives of many millions of people around the world, but most of the global population has absolutely no say in what's being decided.

These meetings are demonstrations of absolute neo-liberal power, of the politico-economic iron fist that's been forged between the global corporate world and our own elected representatives, the people we've traditionally entrusted, either naively or with increasing alarm and cynicism, with protecting and nurturing our democratic interests.

It would be well within the bounds of truth to say our politicians have sold out to the power and authority that's been invested in them — as long as they play by the right rules — by big business. And in doing so, they've sold us, the people they're supposed to represent, right down the drain.

Even though we know nothing of the substance of the "Gang of Six" climate change talks, we can guess what *wasn't* discussed there. Could any of us even wildly imagine that John Howard got up and told the summit "A large majority of the Australian people support the Kyoto accord as the only effective means of combating climate change, and are demanding that we and the United States sign on to the protocol immediately. As their elected Prime Minister I must take full account of, and act upon, their views?"

Of course he didn't. Howard and his retinue weren't there to represent the Australian people; they were there to make sure that our huge, rich and potentially much richer coal mining industry continues to be a supreme and unchallenged energy supplier to us and the world for years to come.

The big energy companies there were likewise determined to protect the fossil fuel industries as the major energy feedstock, and they had China and India at the table, both desperately

committed to vast supplies to drive their own modernization programs and clamouring for even more in the future.

In the final analysis, we, the people, were treated like idiots — or perhaps what the politicians and their baronial masters actually regard us as: too busy with our greed for material wealth, too apathetic to wonder what the neo-liberal collusion between business and government is doing to keep us that way.

The meeting didn't even come to considered *conclusions*, in the sense that many arguments and opinions on energy and climate change had been weighed up. It literally *laid down the law*, told us exactly how, without any recourse to public opinion, things are going to be.

What it all essentially boiled down to was that "coal must stay" as the major energy fuel — and nuclear power, not green energy sources like wind, tide, solar power, will be promoted as the most obvious option to fossil fuels.

John Howard assured us, of course, that industry could be trusted to shoulder the greenhouse burden, and "hailed the partnership as a practical way to address global warming."

Alexander Downer, asked if it was reasonable to rely on business to reduce climate change, somehow managed to twist the issue into a righteous stand against authoritarianism. "The corporate world increasingly realises it has to be responsible," he declared. "We are not trying to run some sort of police state. We don't support targets. We don't support that [Kyoto-like] system."

For a man considered widely to have a mouth that's full of his own feet, this was his best effort yet. It suggested that all nations which have signed and support the Kyoto Protocol, including Great Britain, are governed by the sort of regimes that'll one day get preemptively hammered with bombs and Tomahawk Cruise missiles if they don't mend their undemocratic ways.

So there we are. We were dictated to by an all-powerful alliance of the people who control our resources and produce most of our industrial pollution, and the people we elected to parliament to, among other things, protect our society from environmental devastation.

That we also elected these politicians to represent and protect our rights as citizens of a democracy is perhaps an even more shameful indictment of what happened at the Gang of Six summit, and what has been happening in federal and state politics in Australia, in particular, for some time now.

If you take the "children overboard" scandal of late 2001 as a starting point, when Howard and his cronies feared they could actually lose office to the Labor opposition, we've since seen not just a consistent increase in government secrecy and lack of transparency, of official lying and misinformation, but also a widening blunt *refusal* to release information that, under normal democratic circumstances, we would be perfectly entitled to know about.

Indeed, our politicians — federal and state — have become increasingly belligerent about it. How many times have we heard John Howard himself, our Prime Minister, declare "I'm not going to …" when faced with demands for the release of politically damaging information? Damaging to him and the coalition, that is.

How many others have seen how easily he's got away with it and formed a chorus of blunt refusal to account to the citizenry they represent? "I'm not going to …" says Senator Hill, refusing to release information on the government's role in the Iraq scandal that we have every right to hear. "I'm not going to …" echoes Alexander Downer when pressed for similar information that should be in the public domain.

"I'm not going to …" declares Tony Abbott on anything he doesn't want the Australian public to know. "I'm not going to .." retorts Philip Ruddock on just about every request to come clean on anything important.

And this epidemic of hostile refusal, secrecy, backsliding, twisting of truth, and outright dishonesty — this shameful disregard for the rights, not to mention the intelligence, of Australians — has even penetrated the state Labor level.

New South Wales ministers in particular, copying the autocratic style of former Premier Bob Carr, are refusing time and time again to come clean on the secrecy with which they're dealing, particularly with giant corporations, behind our backs.

To me, this "I'm not going to …" syndrome, coming from our elected politicians, is something most endemic of the steady erosion of democratic rights, values and institutions which is going on under John Howard and his neo-con cronies these days.

Moreover, as the astonishing AWB-Iraq corruption scandal has shown, this blunt dismissal of responsibility and transparency has infected the highest echelons of the corporate world, triggering an epidemic of executive amnesia which would be quite ridiculous if it wasn't so shamefully, criminally dishonest.

All this reflects once again the crucial, and I'd say *pivotal*, responsibility that Whistleblowers Australia now faces.

We've done a sterling job, I think we'd all agree, on our core tasks — aiding and supporting whistleblowers who've been damaged and traumatised by reprisal, lobbying for more effective legislative action on whistleblower protection, campaigning for increased government and corporate transparency generally. But when the politicians and corporate boardrooms blatantly shut the public out of their own society's affairs, and when we actually rely on whistleblowers for what was once the reasonably free and responsible flow of information, then I think we have to become far more proactive in what we perceive our role to be.

We are the experts on whistleblowing. We know exactly how crucial it is to society, and what it inevitably costs the citizen who blows the whistle.

We know all about whistleblower protection; we know how critical anonymity is, how careful and sensitive one must be in getting a whistleblower's message out.

In short, there isn't a better, more responsible, agency that anyone can come to if they are anxious to do the right thing by society and expose wrongdoing, and be assured we'll help them do it without in turn exposing themselves to retribution.

What I'm suggesting is that we no longer just wait for whistleblowers, but

seek them, promote ourselves as a place that prospective whistleblowers can come to in the first instance to get their message out and get help.

It's an indictment of the current level of political and corporate secrecy and spin that sections of the media — the *Sydney Morning Herald* and ABC News for starters — are now openly advertising for whistleblowers with information on major running news issues or simply a story to disclose.

It's my contention that we should be doing the same. We have a duty to combat what the Gang of Six represent — dictatorial arrogance, lying, misinformation and complete denial of accountability, all of which spell the inevitable death of democracy in Australia.

Derek Maitland is Whistleblowers Australia's media officer.

The necessary illegitimacy of the whistleblower

Kim R. Sawyer, University of Melbourne [and Vice-President of Whistleblowers Australia]
Jackie Johnson, University of Western Australia
Mark Holub, University of Western Australia

Recommendation by Keith Potter

Stan van de Wiel owned Schutt Aviation when it was closed by the Civil Aviation Authority after he blew the whistle on contaminated fuel. He recommended my examination of a paper by three Australian academics. Like Stan, I am profoundly impressed by the insights therein.

The paper is relevant to every whistleblower case in our experience. It identifies the motivations of whistleblowers and those who respond. I commend its helpfulness to anyone contemplating disclosure, and to those who would like to respond objectively. It is a significant supplement to guidance information previously published by Whistleblowers Australia. Its application embraces comprehensively, the various reactions by organisation stakeholders to dissidents.

Whilst the paper is written by academics, it is readily comprehended by average lay minds such as mine.

Keith Potter is a life member of Whistleblowers Australia

Editor's note

This paper is far too long for *The Whistle,* so I'm including only the abstract and introductory paragraphs to give a flavour of its content. The full text is available at http://www.uow.edu.au/arts/sts/bmartin/dissent/documents/Sawyeretal05.pdf

Abstract

This article examines the plight of the whistleblower using elements of organizational legitimacy theory. In recognizing the negative correlation between the actions of the organization and the whistleblower it becomes clear that the continuing legitimacy of the organization necessitates the illegitimacy of the whistleblower. This helps explain the continual blacklisting of the whistleblower and their vilification resulting in the destruction of both their professional career and their reputation. Only protective legislation will provide any guarantees for the whistleblower.

1. Introduction

An Ethics Resource Center survey conducted in the US found that rather than value the whistleblower, … nearly a third of their survey respondents say their fellow workers showed respect for those who achieved success using unethical means and therefore implicitly condone the use of questionable ethical practices. Even though the survey indicated an overall increase in the reporting of misconduct, 44 percent of all non-management employees still did not report observed wrongdoing. Why? Two main reasons: one, they did not believe it would stop the practice; and two, they feared that their report would not be kept confidential. These are the silent observers.

What then for the whistleblower? Are they to continue to experience victimization, redundancy, dismissal, resignation, transfer, constant scrutiny, verbal abuse, endless criticism, and even death threats. This retaliation is so well-defined that, according to Rothschild and Miethe (1999), the act of whistleblowing becomes the whistleblower's 'master status.' This new status is viewed by others, both co-workers and management, with suspicion and the whistleblower is likely to be treated as an outsider. It is surprising therefore that Rothschild and Miethe (1999) find that 90 percent of the whistleblowers in their sample will still report misconduct if the circumstances arise again. This is critical to whistleblowing. Whistleblowers are highly likely to be repeat offenders. If management engage in systematic misconduct, employing a whistleblower is risky. The management response instead is to target and discredit the whistleblower. The paths of the whistleblower and the firm will then diverge. They are negatively correlated.

In order to understand this negative correlation and why it is so difficult for whistleblowers to preserve their careers, it is necessary to understand their relationship with the organization. What are the options for the organization in dealing with the whistleblower and other stakeholders? To analyse this issue, we use legitimacy theory based on the writings of Suchman (1995). Legitimacy theory provides insights as to how an organization and an individual derive their legitimacy and it is the cornerstone of our approach.

The remainder of this paper is organized as follows. Section two focuses on the identification of the organization's stakeholders and the conferring of legitimacy. Section three discusses whistleblowers and their relationship with the organization on which they blow the whistle. The blacklisting of whistleblowers is covered in section four where differences between formal and informal blacklisting are highlighted. In section five the need for whistleblowers to get legal protection is discussed. Conclusions are drawn in section six.

Whistleblowers Australia contacts

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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 at 7.30pm, 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 1.30pm. (Please confirm before attending.) The July general meeting is the AGM.
Contact: Cynthia Kardell, phone 02 9484 6895, messages 02 9810 9468, fax 02 -9418 4431, ckardell@iprimus.com.au
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Website: http://www.uow.edu.au/arts/sts/bmartin/dissent/

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

Tasmania: Whistleblowers Tasmania contact: Isla MacGregor, 03 6239 1054

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Editor: Brian Martin, bmartin@uow.edu.au, phones 02 4221 3763, 02 4228 7860. Associate editors: Don Eldridge, Isla MacGregor, Kim Sawyer.

Thanks

The Whistle is made possible by many individuals.

One key section is "Letters and articles." Seldom having time to solicit contributions, I rely on people sending me things they've written. Articles must satisfy the requirements of *The Whistle,* which include being relevant to whistleblowing and not being too long (more than about 2000 words).

Another key section is "Media watch," a selection of items from various media. Some items I notice myself, but more commonly they are sent to me. Quite a few people have sent me items over the past year or so, including John Armstrong, Sharon Beder, Albert Cardona, Don Eldridge, Teresa Kiernan, Mary Lander, Jean Lennane, Steve Lewis, Feliks Perera, Anna Salleh, Christina Schwerin, Stan van de Wiel, Michael Wynne and Patricia Young. I've also received a few items from anonymous sources. There is vastly more material available than could ever be published in *The Whistle,* so not everything people send me can be used, but I appreciate every suggestion. Electronic text with full publication details is especially helpful.

Cynthia Kardell and Patricia Young have been proofreading every issue for quite some time. Their sharp eyes have found numerous typos, inaccurate statements and confusing prose. Their assistance is invaluable.

Patrick Macalister assists by arranging for printing of *The Whistle* at the NSW Law Society.

The NSW branch handles the mailout; Cynthia takes charge of this labour of love.

Thanks to one and all!

Brian Martin, editor

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 07 5448 8218, feliksperera@yahoo.com