

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

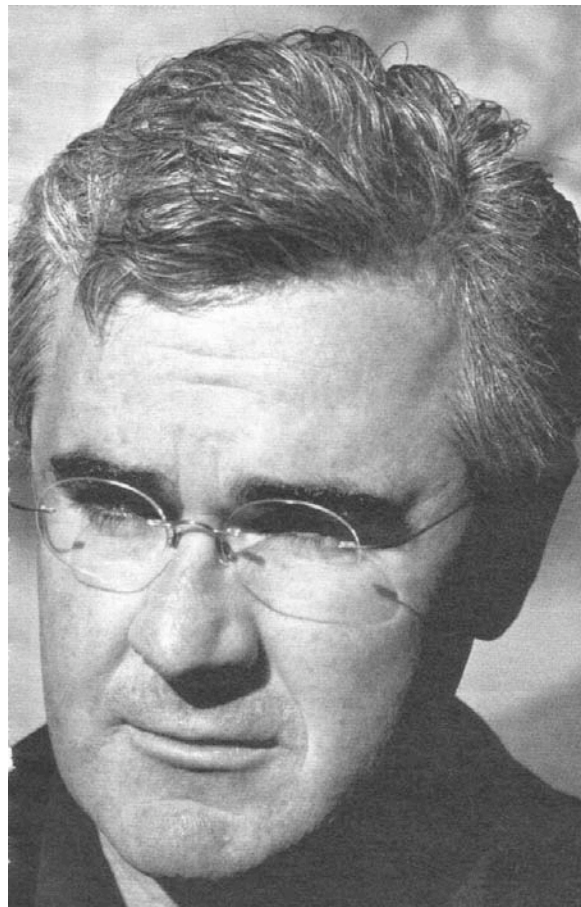
The Whistle



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Andrew Wilkie, whistleblower on government Iraq policy

Media watch

Journalists “must protect whistleblowers”

Duncan Walker
BBC News Online, 19 July 2003

The death of Dr David Kelly has put the spotlight back on the BBC's refusal to name its source for the story that an Iraqi weapons dossier was “sexed up”.

The weapons expert had been identified by the government as a contact of journalist Andrew Gilligan and the main source of his story — the latter a claim questioned by the BBC and denied by Dr Kelly himself.

Mr Gilligan made a second appearance before a Commons committee, which said journalists should be forced to name sources if speaking under Parliamentary privilege.

It is a demand likely to alarm many journalists, who are expected to honour a long-standing tradition of protecting those who come forward with information.

No case has provoked more interest than that of ‘Deep Throat’, who tipped off journalists about the Watergate scandal in 1973 and has never been formally identified.

Mr Gilligan's refusal to name his contact is one of many other examples of journalists standing by their sources — with reporters and their employers often finding themselves the subject of expensive legal actions.

“Golden rule”

Jeremy Dear, general secretary of the National Union of Journalists, said “whistleblowers” must be protected as they “will not come forward if they think they are going to be grassed up at a later stage”.

He called on reporters not to be swayed, arguing that one of the key roles of journalists was to expose wrong doing and bad practice by public institutions and big corporations.

“For that reason it is the golden rule of journalism that we don't betray our sources and are prepared to go to prison to uphold that principle,” he told *BBC News Online*.

“It is not our job to act as information providers for state institutions. They have thousands of people employed to do that work.”

“No dilemma”

It is a position backed by Robin Ackroyd, who was ordered by the High Court to say who gave him medical information about Moors murderer Ian Brady, which he used in a story for the *Daily Mirror*.

Mr Ackroyd, who won an appeal against the decision but still faces an ongoing legal battle, said: “Journalists protect their sources because they have a professional duty of confidence to them.

“It is not a standpoint we take because we are being difficult or precious.”

The freelance journalist said Andrew Gilligan deserved the support of the media and the public and that the Commons committee had been naive to expect him to name names.

He said: “Journalists must stand their ground. And they do stand their ground.

“I have never had one iota of doubt about my own position. I simply have no dilemma.

“I do not reveal confidential sources of information as an overriding matter of conscience.”

Bloody Sunday

Last year journalists were also forced to protect their sources under questioning at the Bloody Sunday inquiry into the events of 30 January 1972, when 13 civilians were shot dead by British army soldiers. A 14th person died later.

BBC reporter Peter Taylor refused to reveal several republican, British Army and police sources to the investigation.

Mr Taylor said: “My motivation is simply my wish to preserve my ability to carry out my duties as a journalist and to protect those who have assisted me in the past.”

Under cross examination at the inquiry, former *Sunday Times* reporter Derek Humphry refused to reveal the identities of two republicans.

They were the head of the Bogside IRA and a woman who was reported to be at a hastily arranged meeting of Provisionals when the shootings on Bloody Sunday started.

Cruise Missiles

But journalists are not always able to defend their sources

Sarah Tisdall famously received a six-month jail sentence in 1983 after the *Guardian* named her as the source of its story about the arrival of Cruise Missiles in the UK.

She had been a clerk in the office of the Foreign Secretary Michael Heseltine and had passed documents on to the paper.

The paper named her after it was ordered by a court to reveal its contact.

Ms Tisdall ended up spending four months in prison.

Striking a blow for truth, freedom and the anti-totalitarian way

Leon Gettler
The Age, 1 August 2003, Business p. 2

The nature of organisations puts whistleblowers in no-win situations despite efforts to protect them.

It's easy to think whistleblowers have become the new protected species in this corporate governance climate. After last year's parade of scandals, *Time* had three — from WorldCom, Enron and the FBI — on its cover as “Persons of the Year” and *Business Week* said 2002 could go down as the “Year of the Whistleblower”.

The trend has continued this year with more businesses adopting whistleblower policies.

Standards Australia recently got in on the act by issuing whistleblower protection guidelines. The guidelines, part of a corporate governance package, cover such issues as independence, confidentiality and the responsibilities of whistleblower protection officers and whistleblower investigations officers (who, incident-

tally, should not be one and the same person).

For an organisation such as Standards Australia, it's the closest thing it has had to a best seller — 940 copies in just four weeks.

Governments too are moving to protect those brave or foolhardy enough to blow the whistle. In the US, under section 1107 of the Sarbanes-Oxley Act, managers now face jail sentences of up to 10 years for punishing whistleblowers. In Australia, whistleblowers are expected to be protected when the Corporate Law Economic Reform Program proposals are finally passed into law.

In Britain, there is the Public Interest Disclosure Act (aka the "Whistleblowers Act"). Not that this stopped the apparent suicide of David Kelly, the British Government scientist and UN weapons inspector in Iraq.

Dr Kelly's fate is a reminder that for all the legislation and special rules, whistleblowing comes at a heavy cost. He appeared before the House of Commons foreign affairs committee and, in scenes reminiscent of the way dissidents were treated in Nazi Germany when they were hauled before the courts, he was subjected to accusatory and bullying questions.

Similarly, the scandal over Jayson Blair, the *New York Times* reporter who plagiarised and invented stories, points to the real problem that whistleblowers face: organisations have entrenched systems of pathology that stop truth from getting out. An internal inquiry at the newspaper found there had been problems in 36 of the 73 pieces he had written. There had also been numerous warnings, including one editor's memo, to stop him.

The effectiveness of laws protecting whistleblowers is moot. No matter how well intentioned, they can't guarantee candour and won't necessarily leave managers and regulators with a better grasp of reality.

The reason for this is the same as the distinction between totalitarianism and tyranny that Hannah Arendt drew in her book *The Origins of Totalitarianism* (1951).

In tyrannical systems, she says, it's the rule of one — a perversion of monarchy — but the leader doesn't try reshaping the way we see the world. Totalitarianism, however, does just

that, through an omnipotent, omnipresent regime that crushes creativity, initiative and dissent and makes everything subservient to ideology, no matter how much it flies in the face of reality. The legacy is not easily removed. Russia's leader, Vladimir Putin, a former KGB colonel, pays tribute regularly to the wartime heroism of Josef Stalin.

The problem is that many organisations have systems that echo Arendt's definition of totalitarianism. It's worth noting that Lenin was a great admirer of Frederick Taylor, the forefather of scientific management — which gave us the time and motion study and, to some extent, business process re-engineering. Much of Russia's industrialisation under the Bolsheviks was influenced by Taylor's ideas, just as in the west. Scientific management was all the rage in Fascist Italy and Nazi Germany and, according to one biography of Taylor, a German historian described Adolf Eichmann as "a perfect Taylor engineer".

It cuts the other way too. The operations of most organisations, for example, are built around formal communication channels. When managers rely too heavily on these, there is less incentive to do it informally, that is by "walking around". This leads to a heavy reliance on rules and procedures that censor and filter information.

No surprises then that the latest LEAD (Leadership Employment and Direction) 2003 survey, commissioned by Leadership Management Australia, found that business leaders were out of touch. Similarly, a recent study by global organisational specialist Human Synergetics found that most Australian organisations had cultures of blame, indecision and conformity. As places that treated rules as more important than ideas, they would not be conducive to whistleblowing.

Apart from risking reprisal from employers, whistleblowers themselves can damage their careers, and in many cases they lack evidence to prove wrongdoing. Last week, a study from the New York University's Stern School of Business found that there were many organisational issues behind silence. The most frequently mentioned reason: the fear of being labelled negatively as a "trouble-

maker" or "complainer", upsetting colleagues and, as a result, damaging valuable relationships.

For the person blowing the whistle, it's almost always a no-win. The trouble is, they provide the early warning signals to prevent avoidable trouble, including tragedies.

Much of this problem boils down to the nature of organisations themselves. Chris Argyris, professor of organisational behaviour at Harvard University, has argued that all organisations have issues that are "undiscussable". And by definition, something that is not discussable makes even the undiscussability undiscussable.

Rules, laws and standards will not by themselves transform companies into places in which it is safe to tell the truth. For organisations, it takes work and discipline.

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Giving bosses the boot

Katherine Harding
Globe and Mail (Toronto),
27 June 2003, page C1

Is the recent staff uprising at the federal privacy commission in Ottawa a sign of things to come in the workplace?

It's the last thing you'd expect a bunch of public servants to do: organize an office revolt.

But last week, more than 50 disgruntled and demoralized bureaucrats at the federal privacy commission made a daring decision to openly rebel against their embattled leader, George Radwanski.

They risked their jobs — and even their careers — by signing a letter that asked the privacy czar to step down while a government committee probed allegations surrounding his lavish expense account and questionable management practices. They leaked details about their boss's alleged indiscretions to the press and politicians. They even protested in front of their Ottawa office tower wearing handkerchiefs over their mouths to suggest they were being gagged.

It was a dramatic and unprecedented workplace rebellion. But was it a watershed labour event? Are workers, in both the private and public sector, becoming emboldened to collectively speak out against — or even purge — a boss they feel is bad?

The protest in Ottawa last Friday “was very interesting. I’ve never seen anything quite like this,” says Hugh Gunz, professor of organizational behaviour at the Rotman School of Business at the University of Toronto. “I’m still trying to figure out what it all means.”

Mr. Radwanski, who resigned on Monday, has flatly denied that he did anything wrong, and even accused the committee of being engaged in a “horrifying smear campaign” and “witch hunt.”

Prof. Gunz said what’s striking about this particular event is that these unionized employees consciously decided that a chorus of whistle-blowers — instead of just a solo act — would be more effective in outing perceived mismanagement and wrongdoings.

“It’s become very clear to many over the last decade or two that whistle-blowers get nailed, even if there are official protections in place,” Prof. Gunz explained. “These workers obviously thought that there was safety in numbers.”

He said that while this manifestation of worker discontent is extremely uncommon, the concept still exists — it’s just never been this explicit. “I suspect we see a lot of this, but we didn’t know what we were seeing ... An awful lot of industrial actions, strikes and so on, may be ostensibly about wages and salaries, but are quite likely really about a manager who isn’t trusted or a leader who’s despised.”

In a non-unionized workplace, this deep-seated worker unhappiness with an employer could show up in a company’s high voluntary turnover rates, he added.

While it’s not impossible for a non-unionized office to stage a mass uprising against an unpopular boss, it’s trickier because they don’t have strong “mechanisms in place that catalyze collective action,” Prof. Gunz said.

James Gaa, a business professor at the University of Alberta in Edmonton who researches ethics, said recent

events at the federal privacy commission don’t necessarily prove that a new breed of take-no-prisoners workers is evolving. However, he said that, generally, workers now have a lower threshold for bad leadership, especially in a post-Enron world.

Lynn Ray, head of the section of the Public Service Alliance of Canada that represents most workers at the privacy commission, said that even though the employees were brave to stand up to their boss, it was not an easy decision for most.

Indeed, she said that even a month ago, most were terrified to talk openly to the union about problems within their office.

“People are always afraid to file a grievance or make a complaint, but this was worse than that by far,” she said. “This wasn’t just people being fearful about being singled out. People didn’t want to leave themselves open for any type of repercussion.”

However, gradually a grassroots movement began to form in the unhappy office, which has only had a union presence since 2001. “Soon they went from being afraid of their shadow to rumblings about doing something, including holding a demonstration,” Ms. Ray said.

She agrees with the experts that this isn’t a sign that workers are becoming more demanding or overreacting. “This was a reaction to their conditions. When they believe that there is a wrongdoing, and something needs to be corrected, they will do it.”

“Our office wasn’t a militant work force — people had just had enough,” echoed Doug Marshall, a review officer in the Privacy Commissioner’s Office who is also a union representative for the Public Service Alliance. Last week, he was the one who personally hand-delivered the workers’ infamous letter to Mr. Radwanski, which said he must step aside because their office was “now in an untenable situation” and “the object of public ridicule.”

Mr. Marshall recalled that it wasn’t exactly a “high noon experience” when he handed the letter over to his boss last Friday. “I told him that it was a letter from the staff. He said ‘Thank you,’ and went back into his office and closed the door.”

So, should other employers be worried that workplace rebellions will start flaring up at offices across the country?

“If I were someone who was managing ethically, maybe then I wouldn’t be too concerned,” Prof. Gunz said. “But if I wasn’t, I should be. But too often people in those positions often feel they are above the rules.”

And it appears a boss doesn’t have to be an outright tyrant to incite the collective wrath of his or her employees. Howell Raines and Gerald Boyd, former senior editors at the *New York Times*, were doomed after recently losing the confidence of their employees.

Their staff publicly and privately accused them of poorly handling a reporting scandal that rocked the 152-year-old newspaper after it was revealed that Jayson Blair, a junior reporter, routinely fabricated articles.

They also bitterly complained that Mr. Raines played favourites with certain reporters and editors while virtually ignoring others.

Earlier this month, both editors resigned after it became clear that the newsroom mutiny wasn’t going away.

Ms. Ray said workers will only take so much abuse or mismanagement before saying enough, and she hopes a new era is beginning for public servants. “There was a time when the workers were warmly welcomed to come forward to challenge or discuss ideas or problems with the government,” she noted. “But if you think back on the last 15 or 20 years, every time something goes sour, the politicians blame the public service employees. Well, if you are going to get blamed for something, then it’s better to do nothing or just keep your head down.”

Prof. Gaa agreed that public service workers often want more out of their jobs because they went into the sector to help build the country. “That’s why it’s not surprising that they wanted to get rid of the irrelevant distractions that were discrediting their office.”

Mr. Marshall said morale in his department has skyrocketed since the sudden departure of their boss. “We’ve collectively learned what can happen when we act together: that we can

overcome the fear and isolation in the workplace.”

In the meantime, his union will keep lobbying the government to enact stronger whistle-blower protections for federal employees. “They are performing a public service ... no one should be asked to pay with their job,” Mr. Marshall said.

Prof. Gunz said it’s probably not likely that will happen any time soon, and he wonders whether office revolts will become commonplace.

“The most interesting question is whether this is a new and lasting phenomenon in the labour world,” he said. “Are people really prepared to act together and say, ‘We don’t believe in the boss?’”

“In a democracy, you can vote them out, but you can’t do that in a hierarchy. It’s the old saying: ‘Democracy ends at the factory gate.’”

Natalie Allen, an associate professor of industrial psychology at the University of Western Ontario in London, agrees, saying that while the public servants’ protest was “impressive,” it’s likely not the start of a trend.

“This was an extraordinary case. The problem, in the mind of the workers, was more clear-cut than usual. And when it’s like that often people are prompted into action. However, if there is an element of ambiguity, then I think you aren’t going to see this very often.”

But she saluted their collective response and said it’s not entirely surprising because “banding together reduces the amount of responsibility.

“People often don’t go along with individual whistle-blowers in large part because there is often ambiguity in the cases and everybody is considering their own individual fate when they do so.”

STOP PRESS

The inquest into the death of Gary Lee-Rogers has been listed for hearing at the Queanbeyan Court House beginning Monday 3 November.

Rat on the loose hell-bent on avoiding tobacco industry anaconda

William Birnbauer
The Age, 26 July 2003

Big Tobacco hands out harsh reprisals to those who betray it. So why did Frederick Gulson spill the beans on document culling?

When Jeffrey Wigand — director of research for one of America’s biggest tobacco companies — went public with what the company knew about smoking-related disease and nicotine’s addictive nature back in 1995, the company tried to destroy him.

Dr Wigand, portrayed by Russell Crowe in the movie *The Insider*, was sued, investigated by private detectives, discredited in a high-powered public relations campaign and called a liar.

Australia’s own insider, Frederick Gulson — whose allegations of document destruction were revealed in *The Age* last Saturday — was wrestling with less threatening, but rather more bizarre, frustrations this week.

A hungry media might have been clamouring for interviews outside his luxury Sydney home, but inside, the whistleblower’s family was treading carefully: Gulson’s two-metre pet python had escaped while he was trying to feed it a rat. The snake has since been caught, but the rat is still on the run and Gulson’s four children, not surprisingly, don’t want to sleep in their beds.

Senior tobacco company executives and their legal advisers doubtless see the real rat in this story as Gulson himself.

The former company secretary and legal counsel of W.D. & H.O. Wills spectacularly broke ranks with the small, secretive group that guards Big Tobacco’s biggest secrets.

His allegations about document destruction by British American Tobacco Australia Services (formerly Wills) were a bombshell, not only in Australian smoking and health litigation but also on the international battleground.

Speaking from South Carolina yesterday, Jeffrey Wigand wished

Gulson well. Both Wigand and Gulson are ex-employees of the British American Tobacco group.

Wigand hoped Gulson would not be punished for speaking out.

“For an attorney out of that framework, that very tight organisation, to come forward is a tremendous statement of personal integrity,” he said.

“My hat is off to him. I hope that he will not be punished; I think that’s normally what people do to that kind of person.”

Victorian Attorney-General Rob Hulls yesterday announced the State Government would seek leave to intervene in a High Court case as a result of Gulson’s allegations, which were published in *The Age* last week.

But why would Gulson, a wealthy man who enjoys fine food, fine wine and fast cars (he has seven, including a DeTomaso Deauville and a Maserati) — choose to shake up his comfortable life by becoming Australia’s “insider”?

His story begins with a phone call late last year. The Victorian Court of Appeal had just overturned a Supreme Court decision in favour of Rolah McCabe in her action over lung cancer, and Gulson left an unexpected message for Mrs McCabe’s lawyer, Peter Gordon, asking that he contact him.

Gordon, a senior partner in Slater & Gordon, instantly recognised the name because Gulson had been mentioned in both the McCabe Supreme Court and Court of Appeal cases, even though he had not given evidence.

Intrigued but wary, Gordon contacted Gulson, who told him he was happy to talk. When they met in Sydney early this year, the 54-year-old Gulson was wearing an official CIA T-shirt and had just stepped off a flight from Alice Springs.

Gordon did not know what to make of Gulson, especially when told he had been given the T-shirt by crew who had landed Caribou aircraft on his northern NSW property in the middle of the night. The crew, he said, were en route to East Timor.

Gulson started drawing up his explosive affidavit. It underwent several drafts and was vetted by his legal advisers. He worried about the impact it might have on his family.

A corporate lawyer for much of his life, Gulson now operates agribusinesses that are the world's biggest producers of essential oils. He is also in timber production, cattle breeding and distributing Australian spices. He has property in the Northern Territory producing table grapes as well as land in NSW and in Canada, South America and Britain.

Gulson is no stranger to stressful public battles or controversy. In the late 1990s he was one of a group of investors involved in a long-running legal battle with Glen Stotter, the founder of Mainstar One, a tea tree oil producer that had branched into "tax-effective" investments.

Last year the Federal Court backed the Australian Tax Commissioner in disallowing claims for tax breaks on interest charges involved in the schemes. The investments, made by about 11,000 people, were largely financed by loans provided by a company associated with Mainstar.

Sally, his wife of 15 years, is involved in events management and public relations.

With such a hectic life, there seems little incentive to take on a multinational tobacco company — he had worked for BAT in 1989-90: why not move on?

Because Gulson is an angry man. He insists his views on BAT's document retention policy were not accurately portrayed in the Court of Appeal hearing in which BAT succeed in overturning the Supreme Court's \$700,000 award to Mrs McCabe. And he is deeply upset that Mrs McCabe's family faces the prospect of losing its home if it has to pay BAT's legal costs. The rat is still loose and running hard.

FBI clings to policy of harassing whistleblowers

Robert Novak

Chicago Sun-Times, 19 June 2003

Special Agent Robert Wright of the FBI's Chicago Division could not have been surprised by the bureau's reflexive reaction when he called a press conference June 2 at the National Press Club. He laid out an indictment of the FBI's "pathetic anti-terrorism efforts."

One week later, the bureau responded like Pavlov's dog, secretly launching its fourth investigation of Wright.

Sen. Charles Grassley, as top congressional protector of whistleblowers, learned of this and did not conceal his rage in a June 12 letter to FBI Director Robert Mueller. He noted the bureau's Office of Professional Responsibility had initiated its fourth investigation of Wright after the first three inquiries found no wrongdoing.

Grassley, second-ranking Republican on the Senate Judiciary Committee, was joined by the panel's top Democrat, Sen. Patrick Leahy. "We are troubled," said their letter, "by the FBI's apparent haste to launch an OPR investigation every time an agent speaks publicly about problems within the FBI." The senators demanded a briefing on what is happening.

The FBI's public affairs office was not aware of the letter until I inquired about it. Although Grassley and Leahy only requested a telephone call to set a date for a briefing, the bureau's spokesman told me it could not comment until a letter to the senators was prepared.

Minneapolis Agent Coleen Rowley's whistleblowing about the FBI ignoring warnings of the Sept. 11 terrorist attacks made her *Time* magazine's co-person of the year and won commendation from Mueller. In contrast, Wright has faced only trouble for raising questions deeper and broader than anything Rowley suggested. Wright's accusations go to the overriding question of whether the FBI can ever be reformed as an effective instrument in the war against terrorism.

Grassley does not blame Mueller for failing to transform the FBI's inbred, secretive culture in nearly two years as its director. Suggesting the persecution of Wright came without Mueller's knowledge, the senator told me: "He can't keep his eyes on everything."

Apart from giving Mueller leeway, Grassley is unforgiving about the Wright affair and draws broad conclusions from this incident. "The problem with the FBI," he told me, "is that it can't tolerate dissent." To effectively combat terrorism, he said, "it's going to take a new FBI from the top to the bottom." As for his request for a

briefing on the treatment of Wright, he answered with the understatement of the Iowa farmer that he is: "Sometimes it takes a long time to get an answer from them."

In contrast, the FBI hierarchy acts quickly when it hears whistles blowing, as when Agent Wright met with the Chicago special agent-in-charge in March 2001, and told him "the international terrorism unit of the FBI is a complete joke." Within three weeks, the OPR opened an inquiry into charges that Wright had supplied classified information to an assistant U.S. attorney. "This was a pathetic attempt," Wright declared in his June 2 press conference, "... before the Sept. 11th attacks, to further silence me from going public about the FBI's negligence and incompetence."

The FBI would soon find out that Bob Wright is not easily silenced. In September 1999, he had hired Chicago lawyer David Schippers, famed as House investigative counsel in the Clinton impeachment. When the FBI retaliated against Wright, Schippers contacted Judicial Watch, the conservative watchdog organization. The FBI has had to face Judicial Watch's redoubtable Larry Klayman ever since.

The 2001 investigation and two subsequent internal probes all cleared Wright, who passed a polygraph test of charges he leaked classified information. Nevertheless, the FBI hierarchy has been implacable in its attitude toward Wright. It has banned publication of his manuscript, which Wright calls "a blueprint of how the events of September the eleventh were inevitable." He describes himself as the only FBI agent "banned from working in the investigation" of 9/11.

The fourth internal investigation of Wright was originally based on claims he was insubordinate ("... the FBI allowed known terrorists, their co-conspirators and financiers, to operate and roam freely throughout the United States.") then tacked on charges that he embarrassed the FBI and acted unprofessionally. Last week, OPR agents interrogated Wright. Clearly, Director Mueller has not changed the culture of the FBI that considers whistleblowing the supreme sin for its agents.

Dealing with political crime

Brian Martin

Whistleblowers discover all sorts of crimes, from theft to perjury. Some of these can be called *political crimes*. Treason and subversion spring to mind; these are crimes against the government. But there are also crimes *by* the government, such as political corruption and human rights violations. Then there are crimes in which both corporations and governments are implicated together.

Making sense of all the possibilities and complexities is not easy. Luckily there is a new book that lays it all out, written by Jeffrey Ian Ross and titled *The Dynamics of Political Crime* (Sage, 2003). Ross has been writing and editing books about crime for many years, especially about state crime, namely crime by governments. *The Dynamics of Political Crime*, designed for use as a textbook, draws on his great knowledge. Here I'll outline some key areas that are systematically covered in the book, mentioning possible connections with whistleblowing.

Crimes against the state are called "oppositional political crimes." There are two main types: nonviolent and violent. The nonviolent crimes include dissent, sabotage, subversion, sedition, treason and espionage. Repressive governments are prone to calling any form of opposition a crime. If you're in China or Uzbekistan, publicly criticising the government could get you a prison term or worse.

Governments adopt a double standard: spying or advocating for your own government is laudable, whereas spying or advocating for an enemy government is treason.

Whistleblowers inside government are at great risk of being labelled traitors. The laws against public servants speaking about their work can make whistleblowing, or even just casual comment, a political crime, though these laws are rarely enforced. Andrew Wilkie, who resigned from the Office of National Assessment and

criticised government use of intelligence, could easily have been charged with a political crime.

The second type of oppositional political crime is the violent sort, commonly called terrorism or assassination. If you are a member of a terrorist organisation and decide to blow the whistle on your comrades, that's taking a real risk! For whistleblowers who are not terrorists themselves, the bigger risk is being labelled a terrorist. It's like being called a traitor, but even worse.

So much for crimes against the state. Far more interesting, in many ways, are crimes by the state, conventionally called "state crime." Ross gives five main types.

The first type is political corruption, which "usually includes accepting or soliciting bribes (i.e., usually money or some other economic benefit, like a gift or service)." The reason that this is a political crime is that "The citizen's trust has been violated," with citizens being the ultimate victims. The three main groups involved in political corruption are politicians, police and government regulators, but others such as judges can participate too.

Political corruption is damaging to public trust because it means that the people who are passing and enforcing laws are the ones who are breaking them. If you're being framed by the police, who are you going to ring for help: the police?

Most political corruption is covered up by perpetrators and by codes of silence that operate among occupational groups such as police. Occasionally there are scandals, with individuals being exposed and convicted, but outsiders seldom know for sure whether a real criminal has been brought to justice or whether a dissident or witness has been framed.

Whistleblowers are of crucial importance in exposing political corruption. Even more importantly, if many officials are potential whistleblowers, this increases the risk of exposure and reduces the incidence of corruption in the first place.

The second type of state crime is illegal domestic surveillance, such as when government agents listen in on

telephone conversations or intercept emails without proper approval. Ross surveys the history of illegal government surveillance in Britain, Canada and the United States. Rather than being an aberration, this sort of surveillance "has been an ongoing organizational policy and practice in democratic states and, in some cases, has been sanctioned by heads of state." No doubt illegal surveillance by governments occurs in Australia, but we hear little of it due to secrecy and the danger to anyone who might speak out about it.

Ross's third type of state crime is human rights violations. This brings to mind torture and extrajudicial killings in third world countries, but it also goes on under systems of representative government. Unlawful beatings by police and prison officers are human rights violations, and there is plenty of evidence that they have occurred in Australia. Many would say that Australian government detention of asylum seekers is a violation of human rights. Another crime in this category is war crime, which could include launching a war in violation of international law. Witnesses are essential for exposing and prosecuting human rights violations, and whistleblowers have a key role to play.

The fourth type of state crime is state violence, which includes torture, deaths in custody, police riots, police use of deadly force, and genocide. Of these, Ross notes that "deaths in custody and police use of deadly force are the most prominent in the advanced industrialized countries." Whistleblowers have a key role to play in exposing such crimes. A few whistleblowers, especially those who are police or prison officers, are targets of state violence.

Ross's fifth and last type of state crime is state-corporate crime, a type of behaviour "committed by individuals who abuse their state authority or who fail to exercise it when working with people and organizations in the private sector." In Australia, this sort of crime is being facilitated by the practice of contracting out government services to private enterprise. As usual, whistleblowers have a crucial role to

play in exposing this sort of state crime. Jim Leggate, one of Whistleblowers Australia's four whistleblowers of national significance, revealed that a Queensland government department had a policy of nonenforcement of mining regulations, costing the taxpayer a billion dollars in lost revenue and allowing massive environmental damage. Ross says that "The potential for further harms resulting from these relationships [between private and public sectors] is alarming, particularly considering that regulatory law aimed at controlling private corporations is today being scaled back while corporations are increasingly transcending national borders both in production and in advancing the consumption of their products." It would not be surprising, therefore, if whistleblowing about this sort of crime becomes more important.

The Dynamics of Political Crime concludes with the statement "As long as there are states and power differentials, political crime will exist." It sounds like there will be a need for whistleblowers for some time yet.

Whistleblowing and dissent

An email exchange involving Peter Bowden, Cynthia Kardell, Brian Martin and Geoff Turner

Background: Jean Lennane wrote a paper titled "What happens to whistleblowers, and why," published in Klaas Woldring (ed.), *Business Ethics in Australia and New Zealand: Essays and Cases*. Melbourne: Thomas Nelson, 1996, pages 51-63. Members of Whistleblowers Australia have given copies of this paper to numerous whistleblowers.

The opening paragraph of Jean's paper reads as follows:

"Whistleblowing is defined in the US *Whistleblower Protection Act 1989* as occurring when a present or former employee discloses information 'which the employee reasonably believes evidences a violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.' An alternative, shorter defini-

tion is 'principled organisational dissent.' This is a clear and convenient way of looking at the issue, and also points out parallels between whistleblowing and older versions of what is basically the same activity."

Peter Bowden is a member of WBA and describes himself as "some odd academic sticky-beak."

Cynthia Kardell is national secretary of WBA and president of the NSW branch.

Brian Martin is international director of WBA and a member of the national committee.

Geoff Turner is a member of the WBA national committee and an information technology expert.

~26 July 2003

Dear Cynthia and Geoff,

Cynthia gave me on Tuesday night a copy of Jean Lennane's paper, suggesting we put it in the new, about-to-be-revised web site. This email is to record my concerns with this. In the first page, she says that the US Whistleblowers Protection Act covers:

"... violation of any law, rule or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. *An alternative, shorter definition is 'principled organisational dissent.'*" [emphasis added]

My problem is primarily this definition of whistleblowing as dissent (which is why I have copied this email to Brian, for his web site is on dissent). I believe that if someone disagrees, for good reason, with something that the government or a private organisation has done, they should make as big a fuss as possible. March up & down, etc etc. But that is not whistleblowing.

Erin Brokovich on PG&E, me marching against the Third Runway at Mascot, many thousands of people against this war. Or the refugees. Or the law that says I have to wear a seatbelt. That is dissent.

I would like to keep whistleblowing for ensuring that people are honest, for stopping corruption or for the things mentioned in the US Act. Whistleblowing is one of the major tools for bringing ethical behaviour into organisations. I believe it unwise

to dilute it. Or to get too many people offside by a definition that they will not agree with. I, for instance, believe that one should march, wave banners, go to the media, get an enquiry and if the enquiry says OK, I can still protest but the public servant responsible *has* to implement it. No choice. Otherwise our whole system of democracy is at risk. I don't want a country where the public servants can decide whether they do or do not implement a decision of government. If they don't like it, quit and then march up and down. *But* it is not whistleblowing. [...]

Cheers for now

Peter

27 July 2003

Peter,

I do not understand it the way you have. Whistleblowing is part of dissent. There are all sorts of dissent.

By "organisational" I understand it to mean "within an organisation".

By "principled" I take it to mean that speaking out is done from a position of principle.

If people disagree with what an organisation is doing, that activity may be policy oriented or it may be wrong or criminal conduct. In which case, one's dissent may be activism or whistleblowing. I think the key is that the conduct complained of is not in the public's interest, particularly as most acts include a reference to gross waste and mismanagement, which may not be wrong or unlawful so much as inept and stupid. If it is in the public interest to have public monies spent wisely and prudently, then dissenting (by speaking out, putting in a disclosure or going to the press etc) may become whistleblowing. An abuse of authority plainly comes within whistleblowing territory as does the public health threat.

The USA law permits disclosures in those areas as all have a strong public interest component. If the organisation is doing something against the public interest than it is in the public interest to put the dissenting view out there. That is, blow the whistle.

Jean has simply coined a phrase or grab-bag to pull it all together.

Anyway, that's my tuppence worth for the moment. Your turn.

Cynthia.

4 August 2003

Cynthia:

I don't think there is any difference between us. But I am far from sure.

I am not against dissent — I must make that quite clear. This letter is a letter of dissent. And one on principle. But I am strongly against describing common and necessary forms of dissent as whistleblowing. I do not believe, for instance, that dissent against policy decisions which are openly arrived at, and discussed publicly, can be described as whistleblowing. If a person disagrees with these decisions, I support their right to dissent against them in any way whatsoever. I only believe that it is not in our interests for this dissent to receive any WBA support activity. Also I believe this issue to be quite important.

Having said that, and set out my several reasons below, I must say that even if everybody disagrees with me, I will continue to support WBA and do my bit for them. My reasons are:

1. Whistleblowing is to correct wrongdoing. Whistleblowing is one of the strongest mechanisms possible to bring strengthened ethical practices into our social institutions, i.e. preventing FAIs, HIHs, Enrons, political and public service cover-ups, politicians and their lies, researchers falsifying their results, etc. This objective of increasing organisational probity through strengthened whistleblowing practices is one objective that I would want to work towards. In short, I want to concentrate on reducing deliberate wrongdoing.

2. Not all dissent is against immoral or unethical acts. Whistleblowing, therefore, should be confined to revealing activities which are unethical, illegal or immoral. Illegal actions are clearly and easily identified. Unethical or immoral actions, however, can be open to dispute, and can often be argued. I use a definition that says on balance, an unethical action will harm somebody, or do them a wrong. Many, but not all, dissent stories meet this definition. Those that do not are my concern. Such examples would be difficult to define in legislation, or to set in a procedures manual for public servant use. I can live

comfortably, however, with the wording of most whistleblower protection acts. Using Jean's words for the US Act: whistleblowing is "a violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety". The arguable definition is mismanagement, but for me the NSW Act provides a sound guideline: "Contrary to law ... unreasonable, unjust, oppressive or improperly discriminatory ... based wholly or partially on improper motives". *Every one of those actions is unethical, able to be clearly identified as such.*

3. We can disagree with many government decisions. So, if a policy decision is made which someone disagrees with, that policy decision has to be clearly unethical or illegal (among other things) for the dissent to be classified as whistleblowing. Disagreeing with the decision on professional grounds is, for me, *not whistleblowing*. If the decision was made as a result of an independent inquiry then I find it difficult to believe that the decision would be unethical in any respect. If the person is a public servant responsible for implementing that decision, then s/he has to implement it. No more arguments. Any other system would be constitutional anarchy. If the person is outside the system, then they can jump up and down forever, or until successful. I would even support them if I thought they were in the right.

4. But that is not whistleblowing. I could in no way call this jumping up and down whistleblowing. Nor can I even dream up legislation under the current acts that would encompass providing support for this type of dissent. In fact, I think attempting to widen the definition of actions which obtain legislated whistleblower support to include policy dissent is likely to do our cause more harm than good.

5. Budget allocations always generate dissent. The other point of argument, apart from policy decisions, is the budget process. Governments do not tax us enough to right all the wrongs of our society. They have to make choices. Sometimes these choices will be, in strict terms, unethical, in that they cause harm, or do not correct harm already incurred.

Examples are budgeting provision that provides alternative and cheaper medical or health services, increased class sizes, delays in correcting traffic black spot conditions, failure to implement prison reform, hospital under staffing, etc. Disagreement, even massive dissent, on these issues, *all of which are matters of principle, or ethical issues*, are fundamental aspects of our society. I have been consulting, teaching and writing on the policy formulation and budgeting process, and the dissent, discussion and disagreement that should be part of the process, for many years now and never once considered it as whistleblowing. And I am concerned that if we say it is, we will put offside many genuine public servants who do their best to decide what is the best interests of society. We will also put offside many public servants and academics who teach planning and budgeting processes and who have invested vast sums of money into finding a better process than we have at the moment.

6. Private sector whistleblowing can only be against wrongdoing. If we include dissent under whistleblowing we also have problems deciding how we handle the private sector, unless we define it as only blowing on or expressing dissent over illegal or clearly identified unethical activities. Dissent from inside on what a company does — on its policies, or products for instance — will not be possible, unless those things are clearly against the law.

7. Internal whistleblowing can only be against wrongdoing. I also don't see very clearly how we set up an internal whistleblower system when the dissent is with a policy decision or a budget appropriation. I believe that within the next decade we will see internal whistleblowing systems set up in most corporations and agencies. I fully support this approach (although it needs safeguards) and believe Whistleblowers Australia should get involved in it (as has the British whistleblower NGO). Such internal systems work now reasonably successfully when it is illegality that they are fingering. I don't see how they would work if they were also to include dissenting on policy issues, or budget allocations, no matter how principled. Speculating, there may be one day an

administrative mechanism to re-examine policy or budget decisions if there was disagreement in the implementing agency, but that day is a long way off, if it ever comes.

8. Responding to public inquiries is not whistleblowing. Most consultants and all investigative inquiries use the evidence of internal people to make their analysis and come up with their recommendations. The inquiry investigating a train accident, for instance, is told by insiders what were the possible causes. The inquiry does not have second sight. The inquiry on the reasons for possible water shortages in NSW uses insider information. People inside the organisation are only too willing to tell an outsider what is wrong; neither they nor the inquiry consider it whistleblowing. Nor are they ostracised.

9. Whistleblowing information is from inside. This paragraph restates the first point in another way. Whistleblowing is from inside the organisation. I believe we all agree on that. Jean's article gave reasons why whistleblowers are attacked and I think all of them were based on the whistleblower being inside. If we are to prevent some of the excessive corporate and public sector wrongdoing of the last year or two, we have to make it easier for insiders to blow the whistle, and find legislation that gives them even greater support than at present. Those inside are usually the only ones who are aware of the wrongdoing. Support for them has my overriding priority.

I guess everybody realises that this email is a statement of dissent. *I disagree with the National President, the NSW president (I think) and the academic guru (that's you, Brian).* This statement is also a matter of principle, for I believe that it is not in the interests of increasing ethical behaviour to include under this banner an activity that many such as me, and most public servants, will say will create misunderstanding, complicate legislative improvement, and which they believe to be a separate issue. But I do not believe this letter is whistleblowing, even though I feel the issue is important and in the interests of developing more effective whistleblowing legislation and support system.

[...] I may be utterly wrong of course and if I am, will willingly admit it. I do not think so, but it is possible. I think Jean's article is a very good one incidentally. It is only defining whistleblowing as principled dissent that I disagree with.

That all said, I am still a loyal member of WBA even if everybody disagrees with me. But until convinced otherwise I will only fight on issues that I consider are clear wrongdoing — unethical or illegal. Disagreement on my part with policy or budget decisions openly and honestly arrived at but which I believe are wrong, will see me parading, or writing letters to the *Herald*, but if I am an insider I would not consider this as blowing the whistle.

Cheers.
Peter

6 August 2003

Hi Peter, Brian and Cynthia,

Not having been copied on all the discussion, I'm not sure if I've got all the arguments, but here's my 2¢-worth.

I think I agree with Peter's point about the strict definition of whistleblowing and that it does not include dissent. Whistleblowing, strictly speaking, must involve the revealing of some information that someone is trying to keep quiet, and does not involve mere disagreement.

I disagree (with Peter) that the whistleblower has to be inside the organisation in question. I can't think of a reason why an outsider shouldn't be referred to as a whistleblower if s/he reveals corruption (say) within an organisation. A citizen may, for example, blow the whistle on police taking bribes to green-light drug-dealing in an area. That, to me, is whistleblowing.

Having said all that, I think that perhaps there should be some room for flexibility in what we are willing to deal with. Perhaps there are some issues that are not, strictly, whistleblowing ones, but involve the public interest and may not be of interest to any other NGOs, but are worthy of some support and/or action. This doesn't mean that we should try to include/cover these other issues in the definition or in legislation, though.

I hope this makes some sense.

Regards,
Geoff

6 August 2003

Dear Peter,

Your comments on whistleblowing are fascinating and informative. I appreciate the effort you're taking to develop and express the ideas.

For scholarly purposes, to define a term in a certain way is quite proper and I have no trouble with that. There are various definitions of whistleblowing by different academics and in my own writing I regularly refer to several different definitions.

Terminology for Whistleblowers Australia is a different matter. We can't easily control the ways words are used, for example by journalists who in turn influence popular usage.

As a concept I don't even like the term whistleblowing very much, having long used "suppression of dissent" as a better way to hone in on what's significant, namely to focus on what and who are causing the problem. But due to the widespread use of "whistleblowing", I have capitulated and adopted this term.

Back to Whistleblowers Australia. My concern is what we do in practice when people approach us. Do we try to decide whether they are "really" whistleblowers or do we accept all comers, or what?

Our introductory leaflet says "The goal of Whistleblowers Australia (WBA) is to help promote a society in which it is possible to speak out without reprisal about corruption, dangers to the public and environment and other vital social issues, and to help those who speak out in this way to help themselves." I think this covers both whistleblowers in your sense, Peter, but also some dissenters in your sense.

In practice, those who can speak out without reprisals are scarce among our members. They are not our primary concern. Many dissenters fall into this category.

For example, peace campaigners might be called dissenters from the standard military model. Some would say that the recent invasion of Iraq was both illegal and immoral, so that speaking out against it might be said to be a form of whistleblowing. Regard-

less of what this is called, though, peace campaigners are unlikely to come in large numbers to WBA because few suffer reprisals for expressing their views, and in any case they have their own networks of support. (It might be useful, though, to share insights between WBA and peace groups.)

I am wary of excluding any group from WBA's ambit. For example, some people who are not employees seem to fit the conventional whistleblower model, such as volunteers helping a welfare organisation, or members of a feminist collective. Yet dissent within such groups can lead to reprisals.

If we say who can and can't come to WBA meetings, join WBA or write for *The Whistle*, for example, we potentially create all sorts of problems inherent in making invidious comparisons. I don't think dissenters (in your sense) are a very big proportion of our clientele. There may well be larger numbers of people who, on a detailed investigation, some of us might decide are neither whistleblowers nor dissenters, but perhaps people with a grudge, with even a few criminals tossed in. Cynthia has found it effective to treat all who arrive the same. Those who are neither close to being whistleblowers nor being sympathetic to whistleblowers usually find little that serves their purposes, and drop away.

You'll realise this isn't a definitive statement, but I hope it clarifies where I'm coming from.

Best wishes,
Brian

8 August 2003

Peter,

You are correct. There is not much difference between us.

Disagreeing about policy is not whistleblowing. Exposing false statistics (say) which are the basis of a policy could be whistleblowing. But it does not help to go on at length about the exclusions. I think that my disagreement with you (if that is what it was) is more to do with my personal inclination and experience that dwelling on definitions has never really helped. So, ignore my irritable pedantry, for the moment, heh.

I think that any definition should be as inclusive as possible. That is, a broad framework within which to work. So, put pen to paper, my dear. I am sure it will be okay, in the wash-up.

I look forward to reading the draft.

Cynthia

13 August 2003

Cynthia

[...] About the disagreeing about policy not being whistleblowing — I think it is important, mainly because we will look ridiculous, and possibly get some genuine people offside if we call principled dissent as whistleblowing. Jean's article and definition "An alternative, shorter definition [than the US definition of illegality, gross mismanagement, etc.] is 'principled organisational dissent.' This is a clear and convenient way of looking at the issue ..."

"Principle" she defines by "concepts such as 'truth', 'justice', 'the public interest', or God."

That definition implies that the students rattling the police barriers about student fees the last time I walked through the quadrangle were whistleblowers. They were certainly principled, they were part of the organisation, and they were dissenting (I agree with them. Increased fees have caused social injustice). But it is ridiculous to describe them as whistleblowers. I wrote a letter to the paper — I am employed by a university — I am not whistleblowing.

Cheers for now
Peter

17 August 2003

Brian,

My email program sometimes plays tricks on me. I only came across your email of 6th August (commenting on my long email to you and Cynthia and Geoff) when I was searching back through for another entirely different email. I think the machine downloads some emails during the middle of the night and does not tell me. I had not intended to ignore you, and appreciate the time you took to reply.

I agree with most of what you say. I agree with "suppression of dissent" as being key to whistleblowing

I agree with the objectives of WBA being to "help promote a society in which it is possible to speak out without reprisal about corruption, dangers to the public and environment and other vital social issues, and to help those who speak out in this way to help themselves."

I am also with you most of the way in being "wary of excluding any group from WBA's ambit", although with reservations. I personally don't want to fight everybody's battles, and I don't think WBA should. But as you said, they tend to exclude themselves.

I am also with you in that "some people who are not employees seem to fit the conventional whistleblower model", provided they have information that would otherwise not be made public.

Where I do disagree is speaking out against well publicised and legitimately arrived at policy decisions being defined as whistleblowing. I am not saying that we stop them going to Cynthia's meetings, nor that we refuse to hear them. Or even stop me marching alongside them (but as me not as a whistleblower). And if we write a book, I would exclude these people.

This means that I accept the objectives of WBA as stated as above, but as a whole, not broken up, i.e. speaking out about corruption and vital social issues without reprisal. But the speaking out on vital social issues that do not concern you and where there is no reprisal is not a whistleblower activity. And those who use the company's or agency's time and resources to speak out or where they should be implementing the decision, get no support from me.

Geoff put in a good 2¢ worth. I think it was about 20¢. I agree with all he said, and back down on the whistleblower being inside the organisation. But they have to have information that otherwise would not get out.

I think the difference between us Brian is that I put more emphasis on eliminating corruption, wrongdoing, etc. whereas your emphasis is on the right to dissent.

Peter.

Whistleblowers Australia contacts

ACT contact: Peter Bennett, phone 02 6254 1850, fax 02 6254 3755, email 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 held in the Church Hall on the first Sunday in the month commencing at 1:30 p.m. (or come at 12:30 p.m. for lunch and discussion). The July general meeting is the AGM.

Contacts: Cynthia Kardell, phone/fax 02 9484 6895, or messages phone 02 9810 9468; email 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

Victorian contacts: Christina Schwerin, 03 5144 3007; Mervin Vogt, 03-9786 5308.

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

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Brian Martin, editor, bmartin@uow.edu.au, 02 4221 3763, 02 4228 7860; Don Eldridge, Isla MacGregor, Kim Sawyer, associate editors

Producing *The Whistle*

Producing *The Whistle* relies entirely on volunteers, like everything else in Whistleblowers Australia. Here's how the process works.

For the front page, I like to use graphics when available. You will have seen Kevin Lindeberg's cartoons on the cover of some recent *Whistles*.

The first main section is "Media watch." The highest priority goes to short pieces that are relevant to members. I prefer to have at least some Australian items but it is good to have some foreign stories too, for perspective.

I see some suitable articles from the media myself but rely heavily on others to send me relevant items. Don Eldridge and Christina Schwerin have been the most regular helpers in this. Having electronic versions is a great help because scanning or typing out articles is tedious and introduces errors. Normally I have far more media items than can be included, so it's a matter of picking a selection.

The next main section is usually "Articles and reports." Basically this means longer original pieces by contributors, often WBA members. The maximum length per contributor per issue is about 2000 words.

Then there is a section on "Correspondence and WBA business." (In this issue, this section is combined with the articles.) This includes letters to the editor plus things like WBA minutes and AGM notices.

Letter and article writers can help by checking every detail in what they write, such as spellings of names, the exact words in any quote and the accuracy of claims. Sending electronic versions makes things a lot easier.

After I get the text of an issue ready, it is proofread, typically by Cynthia Kardell and/or an anonymous supporter. Printing is arranged by Patrick Macalister. After printing, posting is done by the NSW branch, coordinated by Cynthia Kardell. Proofreading, printing and posting can take 4 to 6 weeks.

Brian Martin

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.