

"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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Debbie Locke with NSW Police Commissioner Ken Moroney after being presented with a special certificate of merit for outstanding integrity and ethics in blowing the whistle on graft and victimisation in the police force, 18 December 2003. *Picture: Derek Maitland*

Those who blow the whistle are unprotected

Kim Sawyer
Australian Financial Review,
16 October 2003, p. 63

Phillip Bowman, the whistleblower on the Coles Myer-Yannon transaction, recently observed that Australia's small and tight-knit business community poses a particular governance risk (AFR, June 7-9). Bowman's observation amplifies the risks of tight networks. While such networks reduce transactions costs, they usually reduce transparency as they cover up to protect their weakest links. In the Senate Inquiry into Public Interest Whistleblowing in 1994, the most common complaint of whistleblowers was the lack of independence of those who heard whistleblowing allegations. Too often regulators protect poorly governed networks. The HIH Royal Commission, for example, heard evidence that the Australian Prudential Regulation Authority failed to act on claims by a whistleblowing accountant who reported to APRA on the accounting practices of HIH. In such a world, whistleblowers become independent regulators. But their message is rarely heard until after a catastrophe. And they are rarely protected.

The proposed change to the Corporations Act under CLERP 9 is the most recent addition to Australian whistleblowing legislation. This would extend some shelter to whistleblowers in the private sector. It's welcome but barely goes far enough.

Australian whistleblowing acts have one common factor. There has not been a single prosecution for the victimisation of a whistleblower under any Australian act. Indeed, those who administer the acts do not see it as their responsibility to protect the whistleblower from victimisation.

Just as Australian laws fail to protect whistleblowers, they fail to collect and publish statistics on whistleblowing. An important recommendation of the 1994 Senate inquiry was to establish a Public Interest Disclosure Agency, which would arrange for the investigation of

whistleblower complaints, protect whistleblowers, and publish statistics on these investigations. Such an agency has not been established and statistics are not collected nationally. International surveys of fraud, such as by KPMG, consistently show that whistleblowers are pivotal in the detection of fraud.

The most powerful act in the United States to protect whistleblowers is the False Claims Act, which was enabled in the Civil War and amended in 1986. Under the False Claims Act, a whistleblower can initiate a lawsuit against a fraudulent claimant on the government. The penalties under the False Claims Act are severe. An important provision of the False Claims Act entitles the whistleblower to share between 15 per cent and 30 per cent of the funds recovered by the government. The whistleblower is also entitled to protection from retaliation. The amendments of 1986 restored the normal preponderance of the evidence standard of proof, so that more onus is placed on respondents.

The False Claims Act works because it is credible and it deters fraudulent claimants. Existing whistleblowing legislation in Australia is not credible. The only people it deters are the whistleblowers.

Hospital deaths: too many cover-ups

Editorial, *Sydney Morning Herald*,
12 December 2003, p. 12

It started with the courage and persistence of seven nurses working at Camden and Campbelltown hospitals who complained to management about shoddy care there. Management fobbed them off. Last November four went to then health minister Craig Knowles who, they say, threatened one of the women, saying she could lose her home and career over her "slandorous allegations". The Health Care Complaints Commission investigated, but by February it proclaimed all was well. The nurses continued to complain

and the commission reopened its investigation.

What it revealed in the Macarthur Health Service is shocking. Serious illnesses were missed and wrong operations performed. Nineteen deaths have been referred to the Coroner. Hospitals are dangerous places, full of ailing people and high-risk procedures. But the commission's report shows Camden Hospital as more dangerous than most. It had too few doctors and nurses, not enough specialists, and not enough skilled in emergency work and intensive care. It had poor protocols and procedures to prevent mistakes. And it had a culture in which the nurses who complained of poor care were investigated, bullied and, in some cases, sacked. The management of the hospital and its oversight by the State Government were appalling. [...]

The State Government has called a special commission of inquiry. Its terms of reference appear to be limited to the allegations made by the nurses, but it is likely to encompass questions about the Government's management of those allegations.

There are questions which may not be covered by the inquiry, but arise just as clearly. How will these revelations of poor care and mismanagement affect those treated at Camden Hospital over the past decade? How will the Government compensate those who suffered at Camden? What will the Government do to restore the careers and reputations of the whistleblowers? What will it do to thank them for their bravery in coming forward, which will surely lead to better care for future patients of the region? And what of Craig Knowles, often touted as premier material? What was his role in this disaster? The guillotine has been busy, but there are still heads to roll.

Due to the many articles received, a number of media items have been held over for the next issue — editor.

Uni bullying, cronyism, malpractice, etc.

Derek Maitland

During the years 1999 to 2001, there were many times when Margaret Love, a Glasgow-born educationist working at the University of New South Wales, could have been forgiven for thinking she'd slipped somehow into a completely different reality.

In fact, if you look back at her harrowing experience now, it's almost as if she'd been transported on to the set of the top-rating US television series *The Sopranos*.

With an MBA to her credit and a total 12 years at UNSW, nine of them as head of the Department of English as a Second Language, Margaret was an accomplished, highly-trained, level-headed woman. Yet as she looked around her in her job as commercial projects manager in the burgeoning Educational Testing Centre (ETC), a department spearheading the university's move to commercialise its activities, she could see she was in the middle of a lot of things that were terribly, almost surrealistically, wrong.

First, for a centre employing 60 full-time and over 1,000 part-time staff, with contracts for primary and secondary school exams and assessments in 27 countries, with a \$13 million dollar annual turnover and with heavyweight corporate clients like McDonald's, the Securities Institute, Caltex, Optus and the lucrative and prestigious Australian Schools Competition on its books, why wasn't it making anything even approaching a profit?

Of the 27 overseas contracts, why were only two of them making money? Of the money that was coming in, why were amounts ranging from \$600,000 to something like one million dollars in, for example, "bad debts," moving mysteriously from one column to another in the monthly accounts, or simply disappearing into thin air?

Even more mysteriously, why were some 20 of the 60 full-time staff, including all but three of the managers, sharing the same surnames and appar-

ently related to each other? For instance, why were the marketing manager's son and sister-in-law on the staff books? Indeed, why was the centre's Director, Associate Professor Jim Tognolini, employing in various positions within the company his wife, his two sons, his father-in-law, his brother and another non-related but closely acquainted female associate?

Not surprisingly, the centre suffered from a chronic 50 percent annual turnover in staff.

When Margaret asked any pertinent questions about the worrying state of affairs, particularly the accounts, Tognolini or his lieutenants turned on her, bullying her, humiliating her — a high-profile department head and MBA — with things like "Remember, you're here because you can't get a job elsewhere."

"The whole place, from the director down, operated in a climate of bullying," Margaret recalls. "There was a gang of managers, including the professor's sons, who closed ranks with him against anyone who complained or asked embarrassing questions.

"One of the sons used to sit at his desk with a whisky bottle in front of him, yet if you criticised anything, or anyone, you were called in by the director and blasted. He did that to me once just for allegedly ignoring his wife in a shopping centre.

"I saw people with PhDs in tears from the constant bullying and harassment. People were being destroyed internally, me included. It was terrible, what went on, and that's from someone who grew up in Glasgow."

And if the reference to *The Sopranos* seems a little over the top, the cabal openly joked about themselves as "the Mafia."

When Margaret finally reported the situation to university management, she was told "Bullying is a grey area," and that meant of course that nothing was going to be done. So she went to the Auditor-General's Department with an umbrella complaint on the workplace bullying, the apparent maladministration and the flagrant nepotism and cronyism within the

centre. The file of complaints was in turn referred to the NSW Independent Commission Against Corruption (ICAC) and the NSW Ombudsman. Like the university itself, ICAC did nothing.

She then laid a second complaint with the NSW Auditor-General's Department, this time under the Protected Disclosures Act. This prompted the university to launch its own "internal audit" of the centre, but before it did so the administration proceeded to apparently do what it could to compromise Margaret's anonymity — the very thing the act is supposed to safeguard — by doing a lot of its investigative work by e-mail, and contacting her directly, "so that everyone could see it was me who'd blown the whistle."

During the audit, the university interviewed Jim Tognolini and his managers, but not Margaret. Meanwhile, the word was out in the centre that Margaret was the whistleblower. The management ranks closed, and the harassment and spitefulness began, with the university hierarchy doing nothing to stop it.

"There would be pointed remarks about 'that gutless wonder' in meetings, with all eyes on me," she recalls. "The director's son would bark like a dog behind my back while I was talking with other employees." When she became so stressed that she had to take a couple of days off work, the university solicitor told her to take another two weeks special leave. When she returned from that, Jim Tognolini castigated her for her "unexplained absence, " but then told her "any time you want time off, just don't come in."

Margaret was being effectively isolated and sidelined. Meantime, the university management completed its "audit" but wouldn't let her see the findings. And it was obvious that nothing was really going to be done: the faculty's reply, for instance, to her charge that "people are being destroyed internally, including me," was that "bullying is a grey area." On December 12, 2000, Margaret decided to take the whole affair back to the NSW Ombudsman.

By the end of March 2001, there were two independent investigations going on into Margaret's allegations, the Auditor-General dealing with "management and waste" in ETC and the Ombudsman's office examining the university's mistreatment of her rights under protected disclosure, its handling of her complaints generally, and the nepotism in the unit.

One might expect that an institution as prestigious as UNSW would have not just been as determined as the two government watchdogs to get at the truth, but would have moved to protect Margaret, as well as its own reputation and dignity, while the investigations were under way. Not so. Among other things, ETC was able to change her job description, effectively demoting her from management, then move her from the top-floor executive suite to a new workplace next to the ground-floor warehouse, "among the packing cases," even while the inquiries were going on.

In another incident, two of Tognolini's assistant directors, "two strapping six-foot men," as Margaret describes them, accosted her one day outside the warehouse. They intimidated her so fiercely, she says, that "they did everything but beat me up."

It should come as no surprise at all that the reports of the Ombudsman and Auditor-General, issued in early 2002, not only found that the university had failed its duty to safeguard Margaret under the Protected Disclosures Act but upheld just about every complaint that she had made.

The Ombudsman's report noted that while the university had a protected disclosure procedure called "Guidelines for the Reporting of Known (or Suspected) Criminal or Corrupt Conduct, Maladministration or Waste," none of the senior management it interviewed really knew anything about it, yet they were the officers who were supposed to handle protected disclosure investigations. And the report included an interesting comment by Chris Lidbury, the university's chief financial officer, that the issue of conflict of interest through nepotism or cronyism was not fully appreciated at the university. He added: "It's a culture that pervades the whole place."

Margaret had won, if indeed there can be any sense of victory or triumph in the reprisals that whistleblowers have to suffer. But by now, she was not just exhausted but was having counselling to deal with the intense stress that the whole affair had put her under, and with union help she negotiated a severance package.

Margaret Love's case isn't an isolated one at UNSW. There are at least five other known cases in which staff whistleblowers have made complaints about malpractice, fraud or misconduct within the Physics, Engineering, Biomedical and Ophthalmology departments. Three of these cases have one disturbing thing in common: they show not only a marked reluctance by the university to have the cases independently investigated, but also a clear campaign of isolation, harassment, intimidation against the complainants, and, in two cases, unfair dismissal.

Whistleblowers may remember the case of David Miller and Marlene Reid, the husband and wife team working as lecturers in the Physics Department five years ago. Marlene made a complaint under the Protected Disclosures Act of management bullying, harassment and other malpractices and it was her husband David who apparently paid for it. He was charged with "misconduct" and summarily dismissed by the Vice-Chancellor for refusing to do a job that would have effectively demoted him.

The most current big clash involves Professor Bruce Hall, charged by three of his assistants with falsifying research, or, more to the point, failing to conduct research that he claimed he did. When the first complaints were made, the university conducted an internal inquiry which found Hall had done nothing wrong. The three whistleblowers then found themselves undergoing the standard isolation and intimidation that complainants seem to suffer at UNSW.

But there's since been a second more searching inquiry conducted by a team of eminent independent academics, including one from Oxford University, that is said to be "damning" in its criticism of Hall's conduct. Hall has waged a legal campaign to have the report's findings suppressed. The university has notably

done nothing to dissuade him. It's understood that federal police are now conducting an inquiry. Meantime, the three whistleblowers continue to be treated as though they're the damned, not Bruce Hall.

The university administration has such an unblemished record for inaction and intimidation over fraud, mismanagement and malpractice complaints that Whistleblowers Australia sees the urgent need for a searching and independent public inquiry into UNSW's administration and management practices.

Whistleblowers Australia president Jean Lennane says there've been similar complaints from a number of universities, but "the record at UNSW has been strikingly and dramatically worse than anywhere else. With the number of cases, all from different departments, that have been verified beyond doubt by independent investigators, one has to start asking about the role of top management.

"It would seem that those senior staff, usually heads of departments, indulging in malpractice, were (correctly) under the impression that the university would do nothing about it. How come? The Vice-Chancellor, as the person responsible for UNSW, must be asked to explain how and why he has allowed this to go on so long."

Quite apart from the cases cited above, the footnotes to Margaret Love's experience at ETC warrant a wide-ranging public inquiry.

After the findings of the Ombudsman and Auditor-General, Jim Tognolini resigned from ETC — and effectively switched horses in midstream to become director of the opposition, the Australian Council for Educational Research, ETC's main private sector competitor. Things apparently did not improve much at ETC in his absence. Tognolini's successor resigned and departed suddenly in November, citing "personal problems," and there have been further complaints by staff of continuing cronyism, harassment and management malpractice.

Now, it's understood the NSW Ombudsman has been asked to investigate ETC's new management and to determine why nothing was really done by the university administration, in the face of the findings of

two official government inquiries, to redress the problems at the centre after Jim Tognolini's departure.

As for Margaret, unable to work any longer at the centre, she's now back to where she started as an ordinary teacher operating her own small English school near Sydney Airport. She's managed to pick up the pieces of her life and start again, but like most whistleblowers who've been treated particularly shabbily, her faith, confidence and self-esteem have been severely damaged. And this, as we're all well aware, simply should not be so.

My whistle-stop book tour

Deborah Locke

In September 2002 I completed my book titled *Watching the Detectives*. It was published by ABC Books last year after significant editing upon legal advice. Originally 110,000 words, it was cut down to 73,000 after being told much of it was too shocking in its description of real events. My only reply to that was "my life has been gross." Growing up in an alcoholic household was not my idea of a good time. Things however were only to get worse when I joined the New South Wales Police Force in 1984.

In the first wave of police women who were operational, I was later to find myself as the only girlie at the Gaming Squad and one of two at the Fraud Squad. You have to read the book to learn of my adventures at the Drug Squad and other undercover operations. Senior Constable Phil Arantz was the only whistleblower I knew of in the cops, and for his efforts he was scheduled and thrown in a mental institution. This was a time when Detective Senior Constable Michael Drury was shot through his kitchen window. The 1980s and 1990s were amazing and wild times among Sydney detectives.

An important date in my journey was 9 September 2003. The launch of *Watching the Detectives* was held in the Balmain Presbyterian Church Hall where our meetings of Whistleblowers Australia are held in Sydney. This is a special hall for me. Much of my early

healing was achieved there attending Alanon, and being a member of the congregation for many years. It was time of celebration with balloons and champagne, something I haven't had for over a decade. (No, not the balloons, the other stuff with bubbles.)

I was very honoured that Cynthia Kardell was kind enough to be MC for the night, and a fantastic job she did. Dr Jean Lennane, Rev Ivan Ransom, Michael Drury, Morgan Ogg, Stuart Neil and Quentin Dempster all spoke on the night and I thank them for their support and kindness. The hall was packed to the rafters; it was so inspiring to see such a turn out in support of whistleblowing.

The next day it was off on a two week national promotional tour with my long-suffering husband Greg. He is an ex-copper who kept being told, "Can't you control your bloody wife?" His career was ruined through association. Does this sound familiar?

First port of call was Victoria where I was given much support from Whistleblowers Victoria. Christina is an amazing person who was in constant contact with me via telephone and email before my arrival. A wonderful supper was put on by the group and a lively night was had with added speakers such as Kim Sawyer and Mervyn Vogt. Some Melbourne detectives made it known to me that they were not amused. People write about the police, but this was something from the inside. I wonder if my being a woman also adds to their anxiety. It was a fantastic experience to be welcomed by all the members from the Victorian chapter, and to be able to put faces to voices over the phone. Thanks Raymond for the lift back to our motel room.

Tasmania was an experience. I felt a little scared through the isolation, after the reaction from some Victorian police. However I had Isla MacGregor to make me feel at home. The Italian dinner and talk was fantastic. I met so many amazing and interesting people. I kept saying to Greg, "This is the trip of a lifetime. How often do you get the chance to travel around Australia and meet and celebrate with each group?"

Matilda in South Australia is a strong woman whom I admire. She is focussed and dedicated to the cause. We had a beautiful dinner and then

"Whistleblowing in the Pub" (probably a first). What a great night and I made some friends who I can't wait to meet again.

Neil Winsor was another friend I made, feeling like I already knew him before arriving in Western Australia after all our emails and telephone conversations. He showed us around town and I even spoke at the Royal Perth Yacht Club. It was so good to have met Frank Scott, another cop who had been given the treatment. Avon Lovell was full of good advice and support.

Feliks gave me lots of advice before I hit north. I was very impressed with Queensland and the professionalism of the Whistleblowers Action Group. Greg McMahon has a good show and I was so impressed to be at the University of Queensland and was moved by the bravery of this year's recipient Julie Gilbert. She certainly deserved her award of Whistleblower of the Year. (The silver trophy she was presented with was also very impressive.) Media coverage was also very good for this event. The need for positive media coverage of whistleblowing is essential. People need to know they are not alone and have somewhere to go for support. Gordon Harris, another cop we had the pleasure of meeting, is a wonderful example of life after whistleblowing. On the ride back to our hotel after the presentation he detailed how through courage and determination he has rebuilt his life after his trauma. I believe the bastards win if you go under. Years of stress and pressure take their toll, and many of us suffer with post traumatic stress, but you can't let your whistleblowing experience be the end of your life. You need to pick yourself up, dust yourself off and keep going. Part of the healing process seems to be in sharing your experiences with the newcomer.

What an amazing whirlwind tour. Greg and I were speechless (which is very rare) at the strength of this wonderful fellowship that we enjoy. To have gone to each state I knew at the time was a very special experience. I was blown away with the amazing people we met. All whistleblowers have a book inside them that needs to be written. The more books we get published about our experiences the better. We need the general public to

understand that blowing the whistle is positive for our society. They also help newcomers from making our mistakes on their difficult journeys.

Australia is a big place, but the world is getting smaller with modern transport and communication. I thank everyone for their kindness and support. Every state was fantastic and welcomed us with a variety of events. It was the experience of a lifetime. We need to all stick together and support each other; our strength is in our unity. *Thank you all.*

Whistleblowing and whistleblower protection becoming the international flavour of the month?

Jean Lennane

I was recently invited, as National President of WBA, to attend the 4th Asia-Pacific Conference Against Corruption in Kuala Lumpur from 3-5 December 2003. This was the first time we'd been invited — or even heard of it. The conferences, which produced an anti-corruption action plan two years ago, are run by the OECD and the Asia Development Bank. Most other Asia-Pacific countries had signed the action plan, but not Australia, until the government rather suddenly did so on 1 December. It is also apparently going to sign the UN Convention Against Corruption in Mexico with 124 other nations later in December — something that could have its embarrassing moments later, as the convention includes clauses about transparency of political donations and outlawing the tax-deductibility of bribes. However if the Australian public is never told about it — which seems to be the intention — presumably it will be business as usual in our democratic processes.

The conference was opened by the new Malaysian PM, Badawi, who spoke very frankly about the scourge of corruption and the need to combat it. (Whether and how that translates into action, of course, remains to be seen.) I found the attitude of delegates from developing countries generally

very refreshing in their admission of the size and seriousness of the problem, but sad in that they appeared to believe it's different in developed countries like Australia. I did what I could to enlighten them; but of course Australia's official delegate, a woman brought in at the last minute from AusAid, produced bland assurances about watchdogs, CLERP and other measures that have eliminated corruption in the unlikely event that we've ever had any. (I asked her where she got that misinformation from — she said it came from the Attorney-General's department.)

The reason WBA was invited to the conference was because of its emphasis on the importance of whistleblowers in combating corruption, and the need to protect them. The attitude of speakers from Hong Kong's ICAC and Korea's new KICAC to whistleblowers could not have been more different from that of NSW's Independent Commission Against Corruption; and there was considerable use of the *qui tam* approach (exemplified in the USA's False Claims Act) of quantifying the amount of taxpayers' money saved by whistleblowing on a particular rort, and awarding a percentage to the whistleblower(s). This wouldn't apply to a lot of our members' cases, but would send a useful message — as well as providing compensation — in those where it did.

An extremely interesting aspect of the conference came from an ex-prosecutor-general from Geneva, who apparently has quite a reputation there for chasing and catching money-launderers. It seems the days of heavy crooks (and terrorists) being able to move their millions around Swiss banks with impunity have gone, the new philosophy seeming to be (as one cynic puts it) "be zealous in dobbing in the real crooks, in order to ensure that run-of-the-mill tax and alimony avoiders are kept safe and happy." So while the Aussie corruption shop remains safely closed at home, it does seem it may come under increasing pressure from developments abroad.

Medical whistleblowing

John Wright
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Whistleblowing by doctors has certain peculiar aspects:

- It is infrequent but usually of long duration before response.
- Community support for doctors may intimidate management.
- Retaliation must be swift and severe to protect institutions.
- Inquiries are usually in-house and confidential.
- Doctors' "social power" mandates specially selected "peer" opinions.
- The employer selects "peers" but their opinions may be ignored.
- Governments base their responses on the employers' reports.
- Doctors fear legal ("negligence") responses after publicity.
- Therefore, doctors want publicity to be brief and low key.
- Employers (hospitals) want to be seen as having sound governance.
- Employers' use of psychiatric evaluation of medical critics is rare.
- Any form of reinstatement or recovery for a doctor is exceptionally rare.
- Any changes in institutional practice after criticism are transient and trivial.

Last year I spoke with a cardiologist and a surgeon in different states who had been stood down or sent on leave from public hospital posts pending decisions about their termination. Both had gone public about their perceptions of inferior clinical performance in their workplaces. Both recognised that their hospitals' actions might render them unemployable in their specialties in future.

Given the endless media publicity about the appalling standard of state hospital services (not necessarily or clearly related to lack of funds), it is useful to examine these doctors' situations in the light of my own experience. I allowed my services to be terminated after 25 years of heading a major surgical department with professorial rank. The hospital's procedures then seem to have become a template for in-house enquiries such as those presently evolving for both

doctors recently publicised. (See Brian Martin's website under "Suppression of Dissent: Documents, Health.")

According to the media, a senior colleague described one of the doctors as follows: "... a very able, very energetic, aggressive, opinionated and passionate individual. Some individuals who have those sort(s) of characteristics do have difficulties maintaining comfortable relationships within a team." The other doctor was described similarly in a different context. Both had wide community support as they awaited the results of investigations of their conduct.

State health ministers have refrained from intervening until hospital-based enquiries and reports are completed. The constitution of medical committees involved in the evaluation of these issues is presently unknown, as well as the pre-existing personal views of those "peers" who will judge the doctors' suitability to return to their normal work.

Work colleagues are said to have "unprecedented anguish and concern" at the atmosphere in their departments. A chief executive has commented publicly that "... the stress levels both of the individual (doctor) concerned and also of the team ... are now so high that a (patient) undergoing surgery ... may be under serious risk."

Most medical whistleblowers have sincere passions about what they see as dangerous practices in their hospitals, complicated by bureaucratic ignorance and deliberate inertia. Frustrated, impatient for improvement and fearful of being caught up in medical catastrophes they consider avoidable, they lash out. Amongst all parties involved in whistleblowing, the solitary doctor is vulnerable to claims of personal negligence regardless of his or her actions. The doctor may be declared unsafe or even dangerous in the guise of ominous terms such as "lack of confidence."

Whatever the particular circumstances, there are predictable management algorithms employed by medical bureaucracies in most cases. The whistleblower is now in conflict with a self-protective, defensive corporate body of infinite memory. Once the machinery of disciplinary retaliation is engaged, the whistleblower's status is seriously damaged.

The ingredients of the process of damaging a doctor's credibility include some or all of the same elements as in other work situations. A warning is given not to "wave shrouds" at the administration. Some restriction of practice conditions soon follows. There are implicit financial threats and sudden counter claims of the doctor's performance deficits. Accusations of disharmonious behaviour are invariable, often with those chosen as referees in enquiries. Suggestions of incompetence, dishonesty, disloyalty, drug abuse and even immorality complete the destruction of reputation.

The ultimate tool for humiliation is an inference of psychological "unsoundness" by requiring psychiatric examination of the whistleblower. This may masquerade as sympathy for the well being of the doctor. While it is remarkable that a psychiatrist might accept such involvement with a colleague, coercion by fears of recrimination by management is often overwhelming.

At the end of the day, the whistleblower must survive. Alternative employment has to be found despite having a tainted record. Self-esteem has to be regained. Family morale must be maintained and shunning by past colleagues must be endured. The latter want to shrug off the unseemly conflict within their institutions. Complaining and passion are just not worthwhile. Professional ranks are closed and those colleagues now go on with more careful, defensive lives.

Almost certainly, the best strategy for the defeated whistleblower is to maintain maximum, continuing exposure of the details of his or her complaints and the employer's total response to them. Ultimately, governments must correct the absurd situation where a seriously criticised hospital may conduct a private enquiry into its own actions, with no necessary obligation to explain itself, its procedure, its decisions or even to make amends. A director-general of health recently advised me that such things "could never occur nowadays." Obviously, they can and do.

Dealing with systems failure in WorkCover saga

Muriel V. Dekker

Whistleblowing is often involved in work injury cases in terms of revealing unsafe practices in the workplace and lack of duty of care by the employer. Then when the employer or their officers try to cover up unsafe practices that caused injury and WorkCover fails to apply their "Statutory Claims Procedures," compensation is withheld from genuine injured workers.

These nefarious actions have serious costs to injured workers and their families. Some injured workers wrongly denied compensation lose their jobs, lose their homes, become suicidal. Some families break up from the strain of struggling for deserved workers' compensation.

How does this happen? From my own case and from letters and discussions with other injured workers and their families I became aware of anomalies in the workers' compensation system. The first wall causing prejudice and setting injured workers up for injustice happens when the employer fails to record workers' accidents, injuries or reports about adverse effects.

The next anomaly follows when the employer writes incorrectly on the form for WorkCover (Workers' Compensation Office) that they have no knowledge of the injury. Work that the worker performed can also be prejudicially withheld or wrongly denied.

When these kinds of contradictions occur there is a procedure in place that is supposed to rectify them. As a letter from parliamentarian Santo Santoro explains: there are "Statutory Claims Procedures" that WorkCover is required to apply to all claims. In particular when others contradict the injured worker, then WorkCover is supposed to give natural justice by informing the injured worker. Further the Supreme Court says that it is the job of WorkCover to get the evidence and therefore to know what evidence is wrong or missing. But when WorkCover fails to apply its statutory

procedures, then the breaches of law, such as the employer not informing WorkCover about a report of work injury, and other mistakes remain unfairly uncorrected with the result that the injured worker is denied compensation.

In Queensland and some other states in Australia, WorkCover may send chosen injured workers before its medical tribunals. Then WorkCover puts the evidence it obtains (or fails to obtain) before its medical tribunal. But the medical tribunal can also deny natural justice by not informing the injured worker about the contradictions of others that can prejudice their case. To add insult to injury there is no appeal from medical tribunals to a properly constituted court.

Recently, in Queensland, Q-Comp was set up as an avenue of appeal. But an injured worker complained that when Q-Comp ruled in his favour against the medical tribunal, on the basis that his doctors' evidence carried more weight because they treated the injury, WorkCover then sent him before another medical tribunal that WorkCover pays, which again denied him compensation. Barrister Dr Paul Gerber in an article in the *Medical Journal of Australia* wrote about the medical tribunals as follows: "The Medical Tribunals are a Kafka-like nightmare where the injured worker has to try to prove himself innocent of a crime that they may never have committed without prosecutor or court."

This example highlights the lack of fairness of the medical tribunal system of WorkCover. In what other arena can a person virtually be on trial but without knowing the charge? It also highlights the imbalance of the over emphasis on doctors' opinions in contrast to the crucial factual evidence about what work was performed, reports about work injury or complaints about adverse effects when it is a cumulative work injury not an instant injury, and witnesses' statements. In respect to expert witnesses: a worker who sees the injury happen is a better witness than doctors who were not at the workplace when the injury happened.

An article in the *Courier Mail*, titled "Thousands of injured workers given injustice," said that there is a

need to disband the medical tribunals of WorkCover. The article was initiated from EARC (Electoral and Administrative Review Commission) recommending in the late 1990s to disband the medical tribunals. When Terry Gygar was a parliamentarian he said, "I don't like the Medical Tribunals system of hearing injured workers' cases. They take us away from legal protections built up over centuries of law."

But the problem is not only the original failure to apply procedures and laws, it is also the perpetuation of injustice despite Parliament giving avenues to redress injustice. In Queensland those avenues include the Ombudsman and the CJC, now called the CMC (Crime and Misconduct Commission). I was appalled and sickened by my personal experience of petitioning these government offices, but after a long struggle to get past the ombudsman's offices (who in my opinion made several maladministrations), I managed over some years to finally get through to two ombudsmen. These two ombudsmen on receiving documentary evidence from me personally began to vindicate my case, writing, in effect, that the case has not been heard properly. One ombudsman recommended the only avenue that it is reasonable to expect me to take given the lack of natural justice of the medical tribunal system in practice and the intransigence of WorkCover. That recommendation was for an ex-gratia payment.

Since then, twice I personally handed the ombudsman's letter of recommendation to the Premier of Queensland, the Honourable Peter Beattie MP. The last time was in 2003 at the Community Cabinet Meeting, at Aspley State School. These meetings are an interesting concept of the premier that allows the public to speak to the premier or ministers, to ask questions or complain about an issue — a democratic process, or so it would seem. Now the premier is on the public record speaking on radio and television saying that, "I will not tolerate any attempt at wrong-doing by those entrusted to serve the community." But the premier sent the ombudsman's letter — recommending an ex-gratia payment because there is a work injury — to the Minister for Industrial

Relations. Then Beattie wrote to me that he would let the minister reply to me. That was chilling, despite his otherwise charmingly polite letter, because where is the accountability for the minister? The minister wrote to me saying, "that your worker's compensation concerns have been extensively investigated over the last 30 years and there is nothing further that can be offered to you."

Obviously the Minister ignores the fact that the ombudsman shows that there is an injustice requiring rectification. The late Professor Leymann of Sweden wrote and lectured about this issue. He said, "all around the world people are starting to stand up about the injustice of being allowed to go down the avenues asking for correction of injustice but without a substantive outcome." Who will implement the decision of the High Court of Australia? The High Court, in the decision of *Ainsworth vs the Criminal Justice Commission*, declared that procedural fairness must be observed.

Who is responsible when despite the ombudsman writing that there is a work injury and recommending the ex-gratia payment I remain in a torturous limbo of injustice?

This raises the question: Why is it that now that the ombudsman has given a reasonable avenue for redress of the injustice that a genuine injured worker is still left to suffer injustice, when parliament passed the law giving us the Ombudsman's Act — an Act that specifically states that the thrust of the Act is to alleviate the effects of injustice?

I am interested to get feedback from others experiencing similar anomalies and issues and would ask others to contact me: Muriel Dekker, 30 Allowrie Street, Stafford, Qld 4053; phone 07 3350 1741.

Comments on whistleblowing

Ivan Ransom

I was fascinated by the exchange on the nature of whistleblowing in the October issue. What really motivates a person to hazard reputation, security, emotional well-being and, indeed their

very life, opposing, often singlehandedly, vast organisational machines with limitless resources and minimal moral restraints? I think that it is more than the desire to protest or present an alternative point of view. Jean Lennane's paper ("What happens to whistleblowers and why") touches the core issue, but does not clarify it.

The core issue, I think, is the implied social contract entered into by participating in society. There is the expectation on the part of an employee, for instance, that the employer will not require engaging in activity against the norms of society or to hazard personal safety without substantial and commensurate reward. On the part of the employer there is the expectation that the employee will render fair and honest service (no tickling the till or doing "foreign orders"). This employment contract descends into outright betrayal where an employer does not disclose and remunerate extraordinary demands "up front" or an employee exploits the employer in a manner calculated to unjustly defraud. In most such scenarios, the "whistle" is blown to the union or Workcover or the police and there is a process of retribution and restitution at law. Presumably there is no whistleblowing if there is no perception of being defrauded. The employer may tolerate "foreign orders" as a way of filling excess production capacity and providing "free" advertising. An employee may happily conspire with a shady entrepreneur so long as there is a "fair cut." What brings on classic whistleblowing is transgression of the fine line between the tolerable and the intolerable. The employer has the power of dismissal and substantial means to protect his/her perceived reputation. The employee has only limited means apart from protective institutions.

It is victimhood, the imbalance of power, which is inherent to the classic whistleblower. Victimhood occurs where the mechanisms of a civil society break down and there is no systemic redress for betrayal apart from embarrassment, harassment and sabotage. Many actions of trade unions are, therefore, theoretically a form of whistleblowing. The Department of Community Services, the NSW Police hotline, the RSPCA and the Australian

Consumers' Association are examples of institutionalised whistleblowing. Just as many powerful offenders, emboldened by a psychosis of denial and a sense of betrayal by lesser mortals, will seek to silence tormentors by any means at their disposal, so the whistleblower is also driven by a sense of moral outrage and will often feel compelled to "win at any cost." This is the classic whistleblower conflict.

In government instrumentalities, the mediators of power are supposed to be accountable to "the public," represented by the processes of government. These processes can break down, leaving public servants and the public they want to serve at the mercy of the not-so-high-minded. The process is much the same as in industry except that the "public good" may be expressed through the political process. The wielders of power in public life, by defending their "turf," create even more victims who complain all the more. Again, these are whistleblowers, the otherwise disempowered. Appeal to the derailed processes of government is manifestly pointless to them. The classic conflict of the whistleblower is played out again as a mass movement.

Responsible organisations seek to defuse this conflict by providing a "whistleblower mechanism" which protects the informer while ensuring that the complaint is constructively and quietly dealt with. Often, however, this is just a ploy to get the whistleblower out in the open where the whistleblower and not the problem can be dealt with.

There is one kind of government instrumentality where the whistleblower is in a truly problematic situation: defence. Serving the military inherently involves compromise of "commonly held community values" and personal risk at a level not acceptable in the general community. Armed forces personnel commit to kill on command. They are trained not to question orders and to respect the "chain of command." Conversely the leadership of the military is not subject to conventional accountabilities. Blowing the whistle on the military (or for that matter any related "security agency") can easily lead to conviction for treason or even fully authorised deadly retaliation (Breaker Morant).

Do we need to detail the ins-and-outs of the "Children Overboard," the trials of Andrew Wilkie and the suffering of Mordecai Vanunu? A would-be whistleblower in the military is already compromised before he opens his mouth. Dissent against the military generally cannot succeed as individual whistleblowing. It has to be as organised mass protest and political agitation. Attempts to apply conventional whistleblowing to national security issues are doomed before they start.

A whistleblower, then, is an individual appealing to a standard of morality. He/she is dependant on what is essentially a conservative view of "right and wrong" in conflict with individuals and organisations "pushing the boundaries" beyond the acceptable. Where the communal sense of propriety falls apart, whistleblowing is nonsensical. In a community of pirates one cannot blow the whistle on privateering. Among the French Resistance there were no whistleblowers on cruelty to Nazis. It was historians, not Bolsheviks, who disclosed the liquidation of the kulaks. The whistleblower needs allies who hold the same values to which he/she appeals. Without substantial allies he/she is merely a dissident or a mole. Substantial alliances flow from a perception by the vast majority that the case put forward by the whistleblower is just and right. Opposition to the whistleblower is built around fostering the contrary perception.

Perhaps whistleblowing should be called "ethical assertion."

I know I haven't covered all the bases but that's my two-bob's worth to muddy the waters and mix metaphors.

Comments on the Gary Lee-Rogers inquest

Edward John Regan

Having attended the first three days of the ongoing Coroner's Inquest [3-5 November 2003] into the suspicious death of fellow Australian Protective Services Officer Gary Lee-Rogers, it seems that my original doubts and concerns appear to have been well founded given some extremely dodgy

evidence witnessed thus far. I continue to be disappointed and saddened for Gary and his family, in particular his mother Aileen, whom I first met in Victoria in early March 2003.

Gary first rang me around the time of the 2000 Sydney Olympics in a very distressed state and in several ensuing calls would occasionally burst into tears as he recounted the despicable treatment meted out to him by several apparently corrupt senior APS officers. Gary obtained my details from Whistleblowers Australia who have continued a longstanding interest in the matter and several members have provided emotional support to Gary's grieving mother in her time of need.

As a fellow APS officer on continuous stress leave since late 1998, my own difficulties commenced in late 1994 when I challenged a questionable management decision and involved the intelligent input of a Sydney barrister who solved the "vulgar impasse," but as it turned out, not to the satisfaction of certain sections of the management strata.

As recriminative payback, I was charged over the escape of an unauthorised non citizen (UNC) in a somewhat history making event, as I was the first (and last) and essentially the only officer ever charged over the escape of a UNC in the history of the former Commonwealth Police, the Australian Federal Police and the Australian Protective Service, which had its beginnings in October 1984.

Despite the fact that there have been literally hundreds of escapes of UNCs, alleged evidence of similar disciplinary action against other mythical officers, which was called for production at my Administrative Appeals Tribunal hearing in Sydney on 4 April, was not forthcoming and in fact, on the balance of probabilities, does not exist, contrary to the assertions of several former senior APS management personnel.

In Sydney's *Daily Telegraph* dated 6 November (co-incidentally my own great escape occurred on 6 November 1996), a tribute to legendary Australian bushman R. M. Williams was featured and a particular part, so appropriate yet so absent in today's world, caught my eye: "But one thing he knew instinctively — and that was how to be a good man, a man who was reliable, a

man in whom trust was never misplaced."

Had corrupt senior APS personnel been of the same exemplary good character, the number of similarly affected APS officers, along with Gary and myself, may never have had to suffer the unbridled spite and basic void of common decency so sadly lacking in those higher up the tree than ourselves and with whom we unfortunately had the misfortune to cross paths.

Report on the Inquest on Gary Lee-Rogers

Jean Lennane
9 November 2003

Gary worked for the Australian Protective Service (APS), a branch of the Australian Federal Police (AFP), as a training officer. He was in email and other contact with Whistleblowers Australia for about a year before he died, as a whistleblower who was being victimised and threatened in the usual way for law enforcement officer whistleblowers, including being charged with criminal offences, and threats to his life. His criminal case was listed for the first week in November 2002. He was found dead in his flat in Queanbeyan [a town near Canberra] on 1 October 2002, having been dead several days. He was last seen alive late on 26 September. He had made a complaint of being assaulted by an AFP officer, Anthony Maguire, in the early hours of 26 September.

Gary was in poor physical health, with severe recurrent pancreatitis which had led to his requiring insulin in varying amounts for several months, although after his discharge from hospital on 21 September, having had his gallbladder removed on 17th, he may not have required any. He was also in poor mental health, trying to cope with multiple losses and stresses, and his last hospital admission, from 5-21 September, was precipitated by a suicide attempt of sorts. Because of this, and his still being stressed and depressed when he was discharged, he was to be followed up with daily home visits by the mental health team. These

of course did not occur, the only visit being on 27 September, when the worker, unable to raise Gary by phone or at the door, simply left his card and went away. Had he done what one would hope would be expected in such circumstances, and called the police to break in, Gary would possibly have been found unconscious but still alive; or if dead, with his body in a much more favourable condition for determining the cause of death — the cause at this stage being still unknown.

There are four main possibilities in this case: homicide, suicide, accident or illness, or some combination of one or more of these. It now seems clear that unless it was homicide, in which case of course the perpetrator(s) knows what happened, there is now no way we can ever know for sure.

The inquest ran from Monday to Friday, 3-7 November 2003 and is to resume for another week starting Monday 19 April 2004. I was present for the late morning and afternoon of Thursday and the entire proceedings on Friday 7th.

I had supplied a critique of the autopsy report, which was done by a Dr Michael Burke from the Victorian Institute of Forensic Medicine. Unfortunately he gave evidence on 5 November, before I got there, and apparently answered some of my criticisms. Whether his answers were satisfactory I won't know until I get the full transcript of proceedings that the Coroner promised me.

It's an expensive exercise for the taxpayer, with eight lawyers at the bar table: 4 pairs of barrister and solicitor, representing Gary's family; the Crown Solicitor's office (who although theoretically neutral, made the Freudian slip when talking to me of referring to the family's lawyers as 'the defence'); NSW Police; and the APS/AFP.

NSW Health is not represented, but it is noteworthy that if their worker had done his job, in all probability there would have been no need for an inquest.

The comments that follow are necessarily preliminary and incomplete. However there is enough already known to give rise to considerable concern. On what I've now seen, I agree with the psychological profiler whose opinion, included in the

Commonwealth Ombudsman's report, was that suicide was unlikely.

1. NSW Police investigation

1.1 This was allocated to a junior officer in Queanbeyan, Detective Senior Constable John Moore. WBA expressed concern to a NSW Police Assistant Commissioner about this at the time, pointing out that it put Moore in an impossible position, as there was a question of homicide by an AFP officer. I was told then that it had been allocated therefore to a more senior detective, but when I checked with him, he was simply supervising in the normal way. Moore's junior status has since been remedied by his promotion to sergeant — hardly adequate; many whistleblowers might have their own interpretation of a promotion in such circumstances.

His investigation seems to have been far from ideal, and appeared to cause the Coroner some concern. Whether a more senior/experienced officer would have done any better, or whether this is the normal standard of homicide investigations in NSW, isn't clear. Particular concerns so far are:

1.2 Destruction of Gary's mobile phone. This phone, which could have contained important evidence of the harassment (text messages, etc.) that Gary was complaining of, was listed by Moore at the Queanbeyan police station as lost property instead of an exhibit in the case. As such, after being unclaimed by its (dead) owner for several weeks, it was routinely destroyed. (We trust it won't turn up again at a later date, miraculously restored to life, like the unlicensed firearm in Mick Skrijel's case.) Moore's explanation apparently was that this was an unfortunate accident. Not being in court at the time he gave evidence, I can't comment on this or the 'prosecution' reaction in detail, but I can note that when stating that Gary had destroyed his copies of the timesheets involved in the fraud case against him (being unaware of the charges at the time he did so), counsel assisting the Coroner made it clear this could only have been evidence of guilt.

1.3 The mystery of the disappearing blood.

1.4 Report of an altercation outside Gary's flat late on 28 September.

[1.3 and 1.4 are omitted here due to lack of space]

1.5 Insulin, syringes, other medications. There was no mention in the initial police report, and hence the autopsy report, of the syringe(s) necessary to administer insulin. Apparently the syringe(s) and vials of insulin (whereby some estimate could possibly have been made of the dose Gary had received, if any) and other medications were not removed and preserved as exhibits. There are photos, they say, showing them on the bedside table, which I haven't yet seen.

The Coroner was not happy about this omission either. 'Prosecution' seem to have a self-administered overdose of insulin as their favoured cause of death, despite the unfortunate lack of evidence.

1.6 'Suicide' notes. These were subsequently found in Gary's effects by his ex-de facto when she went to the flat to pick up his things. One was undated, but was packed away with another dated from an earlier episode, i.e. they are probably irrelevant. However it's of interest that as well as failing to look in the laundry tub, investigators didn't go through Gary's stuff, or bother to pick up the pills she said were on the bedroom floor.

2. Apparent bias in counsel assisting the coroner.

Both James Shevlin (Crown Solicitor's Office) and Saidi, freelance barrister, were at pains to assure me of their neutrality. Unfortunately this was not at all evident in their line of questioning, which appears to have cast Gary as an alcoholic Machiavellian (yes, Saidi did use that word!) Walter Mitty-type (shades of Dr David Kelly) criminal fraud. This was to be expected, as standard in whistleblower cases, but what is now somewhat alarming is that the character assassination appears to be going to be extended to anyone foolish enough to give evidence in Gary's favour, particularly regarding the fraud charges. The only witness so far on this, Jon Wood, found the body, so presumably had to be called. (There

seems to be no intention to call Gary's other defence witnesses.)

Following Wood appearing, and sticking to his guns about having witnessed Gary's boss authorising Gary to use his electronic signature on his timesheets, Saidi suggested to the ambulance officer present when the body was found that Wood had refused to give his name and address; and to the social worker who had befriended Gary in hospital that he and Wood were best mates and in constant communication, suggesting that they would have cooked up Wood's evidence between them.

Gary of course, like the rest of humanity, wasn't perfect, and it seems he did indeed talk up his job experiences and qualifications (how rare is that?).

He also probably did forge two medical letters about himself. This was in the context, both times, of a relationship breakup, where he appears to have been trying to elicit sympathy from his ex. On the alcoholism charge, as is common in children of an objectionable alcoholic, he was mostly teetotal, with occasional short-lived episodes of binge drinking. The Machiavellian charge appears intended to explain the departure of the senior officer whose alleged misconduct Gary had blown the whistle on. It wasn't because Gary's allegations were justified, but because of cunning and sinister machinations intended to cover Gary's own fraud.

3. Apparent bias in the Commonwealth Ombudsman

The Ombudsman's report is included in the brief of evidence to the Coroner. Unfortunately at over 70 pages it's hard to spread around, but on my quick reading, it is the combined whitewash and hatchet job we were expecting. I would have thought it would be better tactically for them to at least try to be seen to be giving Gary a fair go, but apparently not. Perhaps he was just too evil?

With Gary's inquest half over, many, many unanswered questions remain. Most may never be answered. The Coroner seems to be trying to do a good job. We need to work on those advising her to get them to give her both sides of the story.

WBA business

Draft Minutes of WBA Annual General Meeting

Canberra ACT
12noon on 7 December 2003

1. Chaired by J Lennane,
President.
Minutes taken by C Kardell,
National Secretary.
2. There were 22 attendees,
including 4 visitors. Eight (8) members
in SA and VIC attended by telephone
on a conference call for the duration of
the meeting.
- 3-4 Apologies and attendance are
omitted here, to preserve
members' confidentiality.
5. Previous Minutes AGM 2002.

J Lennane referred to the
previous minutes published in
the January 2003 edition of
The Whistle, a copy of which
had been made available to all
present immediately prior to
the meeting. She asked if
anyone present could move
that the previous minutes as
published be accepted as a
true and accurate record.

Proposed: B Martin.
Seconded: C Kardell. Carried.
6. Business arising.

C Kardell indicated that the
Gary Lee Rogers Inquest
would be dealt with under
Other Business.
7. Election of Office Bearers.

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

 Position of National
President

J Lennane, being the only
nominee, was elected
unopposed: she served as
returning officer for the
remaining positions.

Executive Positions.

The following nominees were
elected unopposed.

Vice President: Peter
Bennett [ACT]
Junior Vice President:
Christina Schwerin [VIC]
Secretary: Cynthia Kardell
[NSW]
Treasurer: Feliks Perera
[QLD]
National Director: Greg
McMahon [QLD]

National Committee
Members (6 of).

Eight nominations were
received. J Lennane suggested
that as WBA needed all the
volunteers it could get, the
meeting consider moving a
motion to elect the first six
unopposed and to co-opt the
remaining two, as casual
committee members.

Accordingly the following
nominees were elected
unopposed on that Motion,
moved by P Bennett and
seconded by B Steele.
Carried.

Brian Martin:
International Liaison
Geoff Turner:
Communications
Derek Maitland: Media
Peter Bowden:
Education
Mervyn Vogt:
Committee Member
Catherine Crout-Habel:
Committee Member

Matilda Bawden: Casual
Committee Member
Lori O'Keefe: Casual
Committee Member

J Lennane congratulated the
incoming members, noting
that the increasing number of
talented, professional and
strongly motivated members
wanting to contribute could
only augur well for the
organisation.

She noted that J Pezy, as SA
Chair, was part of the
Committee.

8. Position of Public Officer.

J Lennane advised the
meeting that Vince Neary was
prepared to continue in the
position of Public Officer, if
required. She thanked Vince
for his willingness to continue
in the position.
Agreed.

J Lennane asked the meeting
to nominate two members to
sign an authority prepared by
V Neary, to lodge the
required annual fee with the
NSW Department of Fair
Trading.

Motion moved by B Martin to
nominate J Lennane and C
Kardell so to do.
Seconded: B Steele. Carried.

9. Treasurer's Report.

J Lennane tabled a financial
statement prepared by F
Perera ending 30/6/03 and
briefly stated the details as
follows:

- Income: \$4,455.62
[Subscriptions,
Donations and Interest]
- Expenses: \$4,190.69
[Whistle production,
networking etc and AGM
costs]
- Excess of Income over
Expenditure: \$264.93

Balance Sheet at 30 June
2003.

- ❑ Accumulated Fund Balance: \$4,606.58
- ❑ Add Surplus for year: \$264.93
- ❑ Total: \$4,871.51

- ❑ Assets: B Martin Book A/c \$306.20
- ❑ Balance at Bank: \$4,565.31
- ❑ Total: \$4,871.51

J Lennane called for the Treasurer's report to be accepted as a true and accurate statement of accounts.

Moved: P Bennett

Seconded: B Martin. Carried.

10. REPORTS

❑ The President's Report.

Jean was invited to attend the Asia Pacific Forum against Corruption, which was held in Kuala Lumpur last week and organised by the Asian Development Bank and the OECD, to promote the United Nations Convention on the Prevention Against Corruption signed 2 years ago. (Australia signed up the week before the Forum). The Treaty is to be signed in Geneva in two weeks' time.

The Treaty describes whistleblowers in different ways but Article 32 is strongly supportive of the protection of whistleblowers and requires, for example, the protection of witnesses in a variety of situations. It does not become law in Australia unless it is legislated but is an international obligation and in time will find its way into our laws.

Jean reported that the organisers had looked for active anti corruption bodies in the guest countries and had found a surprisingly supportive and interesting group of people. Chris Wheeler, NSW Deputy Ombudsman, and Jean were the Australian contingent. The Forum organisers believed WBA to be one of a kind in the world.

Jean thought it a worthwhile exercise in spearheading change in the Asia-Pacific region, but was uncomfortable with the realisation that our neighbours felt that Australia had the issue solved. We know different

and Jean said so, whenever she had a forum.

Jean raised the Gary Lee-Rogers Inquest held the first week of November last, in Queanbeyan, NSW. She urged members to set aside the week beginning 19/4/04 to attend and keep up the public pressure when the inquest re-opens. Jean believes it was media pressure and our urging which prompted the decision to have an inquest, in the first place.

After observing the proceedings, Jean has the impression that it is known what happened, but is concerned that it may not come out. She is certain that the events demonstrate a clear need for the reform of the investigation of homicides in which police officers are implicated. Nonetheless, she is encouraged by the Coroner's decision to widen the terms of reference and to provide Jean with a copy of the transcript, for her comment and suggestion. She noted the Coroner appeared to welcome public scrutiny.

Jean has been collecting details of unsolved suspicious deaths implicating the police for a number of years. She plans to put the details up on a new website called *whistleblowing.com*, which is planned (by one of our members) to concentrate on police matters. Anyone having any information is to contact Jean.

The Corporate Law Economic Reform (CLERP 9) put out by Treasury has been broadened in its scope since we first heard about it at AGM 2002 from our guest speaker Peter Rooke, Projects Director, Transparency International Australia. It now goes beyond ASIC and incorporates reforms, including whistleblower protection, applying across corporate Australia. Jean noted the contribution made by members Peter Bennett and Kim Sawyer in this development.

Jean is keen for WBA to give annual awards to watchdogs. She put up the "Lucy" Award, as a suggestion, based on her dog's response to a possible intruder. She went missing, under the bed. It is a common enough response.

❑ The Secretary's Report.

Cynthia Kardell reported our membership to be a little down on last

year, at 244. A significant number appear to have been lost due to a change in address. She urged the committee members to be mindful of the need to pass on contact details if known and to remind new members that we do not provide receipts upon joining.

Cynthia urged members to encourage those they help to join. She said that when someone asks "How can I pay you for what you have done?" she replies that "helping WBA (by joining and contributing) will be thanks enough." Try it.

Cynthia also urged members to avoid problems by making sure that newcomers had realistic expectations. The WBA constitution does not allow WBA to advocate or represent others. Individual members, singly or in groups, can assist one another, but only as individuals (who happen to be members of WBA). WBA can take up the wider reform issues, and point to a whistleblower as an example of what is required by reform. This can be a ticklish concept to get your head around, but you need to, if you are to avoid upset and mayhem.

❑ Report from Victoria.

Mervyn Vogt provided a written report on behalf of the Victorian whistleblowers, which was available at the meeting. He praised officebearers C Schwerin, R. Chhibber and L O'Keeffe, who have allowed the group to expand their operation and support to new members.

Public health issues of damaging ventilation from an unshielded furnace, asbestosis arising out of toxic indoor moulds and others prompted a formal submission to a government Inquiry on Occupational Health and Safety Reform. Other issues of bullying and improper conduct in the armed services, and public interest issues in CASA and Telstra, have kept the group active. Mervyn noted that he had been able to get 20% of the vote, but had been prevented by the government votes from taking up a position on the Telstra Board.

The group has continued to be supportive of Mick Skrijel and Raymond Hoser in their long running cases.

Victoria hosted a successful book launch for Debbie Locke's book *Watching the Detectives*.

□ Report from South Australia.

John Pezy reported by telephone that their group continued to be busy and to take a particular interest in the general reform of the legal profession, largely because of their knowledge of the A Morgan and T Grosser cases. Matilda Bawden prepared a submission on the branch's behalf to a parliamentary joint commission on legal reform and was assisting other individuals to do the same.

South Australia hosted a successful book launch for Debbie Locke's *Watching the Detectives*.

□ Report from the ACT.

Peter Bennett has been working with a group of academics from Canberra Uni to promote a better use of the ACT whistleblower act [called the Public Interest Disclosure Act] by the Ombudsman and other authorities, as the Act induces disclosures without affording protection. He cited an instance where the wrongdoer was interviewed by the Ombudsman, and the whistleblower was interviewed by a junior staffer.

Peter has made a submission on the CLERP 9 proposal (refer President's Report above).

He is involved with an inquiry into the Australian Sports Commission, as an FOI request produced a bill of \$1400 to consider whether they should release policy documents which did not exist. He will keep us posted.

□ Report from New South Wales.

Cynthia Kardell reported the meetings were less well attended, but that email and telephone contacts were up. The Tuesday Caring and Sharing Meetings continue to be blessed by the fortnightly attendance of D Maitland and P Bowden, who were both insightful and practical in their dealings with those who came to the meetings. The weekly brigade of M Zoidis, P Sandilands and D Clarke are to be commended for their unwavering commitment to the Tuesday night

meetings, which are convened by C Kardell.

The NSW Branch had been busy supporting the current rash of University of New South Wales whistleblowers, and police reform via its involvement on the Internal Witness Advisory Council meetings. We have been instrumental in getting the police to take whistleblowers back on staff and to have their courage recognised at the annual graduation ceremony. We, like the other states, have hosted a book launch for Debbie Locke's book *Watching the Detectives*. It was a spectacular success: about 150 people attended. We have provided some effective cross border support for a Queensland services whistleblower, in tandem with a TI (Australia) operative.

J Lennane has made a submission on behalf of WBA to a government inquiry into mental health in NSW and continued her assault on NRMA propriety. C Kardell made a submission to the Police Service about police legislative reform. D Maitland has provided media support and has written up some of the whistleblower stories. P Bowden has published articles on ethics of whistleblowing. He, G Turner and C Kardell are upgrading our website.

B Martin and J Lennane have continued to respond to phone enquiries, together with C Kardell. G Turner deals with incoming email contacts. And finally, only this week, the NSW Premier's Department decided to subscribe to *The Whistle*.

□ Communications Report

Geoff Turner reported that he continues to transfer email communications within the group and educate the users where he can. He noted that Peter Bowden has joined him and Cynthia in upgrading the website whistleblowers.org.au, and that we are (now), with Peter's help, starting to make progress.

Geoff was, once again, responsible for the tele-conference hook-up at the AGM.

□ Media Report

Derek Maitland reported that, with C Schwerin's help in Victoria and journalist Gerard McManus in Sydney,

we were able to publicise the Gary Lee-Rogers matter with some effect. And with C Kardell on the telephones and him on the case, we were able to mobilise the print media and ABC Four Corners to publicise the Bruce Hall matter at the University Of New South Wales.

He lamented that some of the journalists he had contacted appeared to want it too easy. But we need to realise that we have to help ourselves get over the prejudice out there, so we should be careful not to bombard a journalist with a lot of detail, as it was mostly a turn-off and unproductive, and confirmed existing bias against what some see as dobbing.

□ International Liaison

Brian Martin focussed on the internet, as an alternative means of getting your story out there and urged members to use it more. He said that the UK whistleblowing organisation Freedom to Care is still active. He urged members to reach out to individuals and organisations with shared concerns across the globe.

He also reported as the editor of *The Whistle*. It is being published routinely at three-monthly intervals and has become a relatively straightforward process. But he would welcome more material from the membership, as he does not have the time to go looking more widely.

11. Agenda Items.

Jean Lennane asked who was going to put up their hand for the AGM late November next year.

Mervyn Vogt agreed that Victoria would host the AGM in 2004. He undertook to confirm date and venue for inclusion in the July *Whistle*, so that agenda items could be published in the October *Whistle*.

12. Guest Speaker: Andrew Wilkie, Office of National Assessments whistleblower.

Andrew Wilkie went over the history, before taking questions, some of which are set out below. Briefly he was a systems analyst at the ONA and had access to the database about Iraq. He decided the war was unjustified and

decided to resign and go to the media to get support for his argument. Based on raw intelligence he argued the war was unethical, Iraq did not pose a threat, a war posed too many unknowns and the government could have looked at other options.

Wilkie was asked why others did not speak out. He analysed it this way. The intelligence community was diverse, some tend to always comply, some always agree along party lines, some fall for spin, some think they cannot change anything and mostly they do not have the financial and personal security to object. Plus the intelligence community has been under increasing pressure to comply, since East Timor.

He was asked why did he decide to resign? The issue was bigger than the employment issue it would have become had he stayed on.

And did you expect the government to criticise you in the way you were? Yes, it wasn't a surprise.

Were you pleased and surprised to get the Whistleblower of the Year award from the UN? Yes. The award was prompted by a Sydney person and may not be repeated. I hope that it is repeated, as it is an important recognition for whistleblowing.

Jean Lennane wished him well on behalf of WBA. She thanked him for taking the time to come and speak to us, but mostly for blowing the whistle on the war in Iraq.

13. Other Business.

There being no other business, the meeting was opened for discussion of the items previously advised.

□ Matilda Bawden (SA): Tony Grosser's appeal failed. He was given 23 years. Catherine Crout-Habel has picked up where Jack King left off, and is helping him with his appeal to the High Court.

□ Dave Berthelson: The Mick Skrijel wrongful criminal prosecution case failed. Based on the detailed analysis, photographic evidence and history over 16 years provided by Dave, the judicial system failed Mick. Costs were awarded against Mick and Dave,

as the lay advocate. Dave was fortunately successful in his defence of the costs application.

□ Jean Lennane: The Asia Pacific Forum (dealt with above) was fairly posh, which was nice. But Jean did become a mite uncomfortable as part of an official motorcade through the city, when the traffic lights were switched to red, to allow them an uninterrupted passage.

The discussions and talks were diverse, including, for example, the role of NGOs, reforms to the public service by the introduction of codes of conduct, legislation, CLERP 9 initiatives and criminalising corruption. The organisers hoped to involve the wider Asia Pacific society over time (the Australian DFAT is involved with this aspect).

Workshops were available on topics such as conflict of interest, drafting whistleblower laws, techniques for detecting corruption, improving procedures and legal assistance to allow for the proceeds of crime to be recovered in Switzerland.

Significantly, the Hong Kong and Korean ICACs talked long and persuasively about the central role of whistleblowing in exposing and controlling corruption.

□ Peter Bennett: The UN Human Rights Conventions have to be utilised more, in law, as they may assist in broadening and strengthening the right of the public servant to comment without fear of reprisal.

Peter has a Federal Court matter before the Full Bench, in relation to the operation and effect of the FOI Act. It raises Constitutional matters and may create a precedent in law.

His projects for 2004 are the enactment of the Democrat's Public Interest Disclosure Bill and a better application of the prevailing ACT whistleblower act, upon which it is modelled, and to look at the issue of government grants for particular projects, not operational costs as such.

□ Peter Bowden: Stop press! There is an Australian Standard for internal whistleblowing: refer ASI 8004.

Jean thanked all present for making the day a memorable one. She asked them to show their appreciation for Peter Bennett and his wife, Yvonne, for making it possible and Geoff Turner for the tele-conferencing facility.

Meeting closed 4.50pm.

See you in Melbourne, November 2004.

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 7:30 p.m., Presbyterian Church Hall, 7-A Campbell St., Balmain 2041.

General meetings are held in the Church Hall on the first Sunday in the month commencing at 1:30 p.m. (or come at 12:30 p.m. for lunch and discussion). The July general meeting is the AGM.

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Goulburn region: Rob Cumming, 0428 483 155.

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Website: <http://www.uow.edu.au/arts/sts/bmartin/dissent/>

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

Victoria

Meetings 2.00pm the first Sunday of each month, 10 Gardenia Street, Frankston North.

Contacts: Christina Schwerin, 03 5144 3007, christina_schwerin@yahoo.com; Mervyn Vogt, 03-9786 5308, mervyn@teksupport.net.au.

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Whistle

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

Comments from Ralph Nader

Ralph Nader is well known as a consumer advocate and more recently as US Greens candidate for president. In the 1960s, he wrote a book titled *Unsafe at any Speed* that attacked US automobile manufacturers for making unsafe cars. General Motors arranged for surveillance of Nader in an attempt to obtain information that might discredit him, but this backfired when the surveillance was revealed. His experiences of speaking out and suffering reprisals led Nader to take an active interest in whistleblowing.

A reader recently forwarded an interview with Ralph Nader published in *Time*, 5 August 2002. Remember that this was at the height of the Enron scandal. The first two questions and answers are worth reproducing:

Time: Did you think there was this much corporate corruption?

Nader: No. And isn't it saying something that it exceeded my anticipation? It is impossible to exaggerate the supermarket of crime. It's greed on steroids.

Time: Why didn't we know about it all sooner?

Nader: What amazes me is that there are thousands of people who could have been whistle-blowers, from the boards of directors to corporate insiders to the accounting firms to the lawyers working for these firms to the credit-rating agencies. All these people! Would a despotic dictatorship have been more efficient in silencing them and producing the perverse incentives for them all to keep quiet? The system is so efficient that there's total silence. I mean, the Soviet Union had enough dissidents to fill Gulags.

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.