

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

# *The Whistle*



NO. 39, SEPTEMBER 2004

Newsletter of Whistleblowers Australia

PO Box U129, Wollongong NSW 2500



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# WBA annual general meeting and conference

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27-28 November 2004

## WHISTLEBLOWING: COURAGE WITHOUT MATESHIP

Hotel Y Conference Centre, 489 Elizabeth Street, Melbourne.

### *Saturday Program*

Registration commencing at 9am.

2 workshops will be held in the morning

Lunch provided

2pm AGM

4.30pm discussion

5.30pm

7pm pre dinner drinks

7.30pm Dinner

### *Sunday Program*

Registration commencing at 9 am.

9.30am. Opening address by WBA president.

9.40am. Whistleblowing in Australia: the last 10 years

11am The Importance of Truth –speaker tba

11.30am The Importance of Truth – Panel Discussion

12.45pm Lunch

2pm. Courage without Mateship – speaker Kim Sawyer

2.30pm. Whistleblowing and policing – Panel Discussion

3.30pm. Break

4pm. Whistleblowing: What lies ahead – Panel Discussion

5pm. Closing address.

**BOOKINGS:** In order to facilitate all necessary arrangements, booking deadline is 12 November

Cost: Option 1. AGM Day only \$20

Option 2. AGM and Dinner \$60

Option 3. Both days (AGM & Conference) and Dinner \$80

Option 4. Conference day only including lunch \$40 (concession \$20)

Post your application to P.O. Box 446, Cheltenham Vic 3189

Make cheques or money orders payable to “Whistleblowers Australia” and clearly identify your name, contact details and option 1, 2, 3 or 4.

Contact Details: Stan van de Wiel – [svdwiel@ozemail.com.au](mailto:svdwiel@ozemail.com.au) 0414 354 448

**Nominations** for national committee positions must be delivered in writing to the national secretary (Cynthia Kardell, 7A Campbell Street, Balmain NSW 2041) at least 7 days in advance of the AGM, namely by Saturday 20 November. Nominations should be signed by two members and be accompanied by the written consent of the candidate.

**Proxies** A member can appoint another member as proxy by giving notice in writing to the secretary (Cynthia Kardell) at least 24 hours before the meeting. Proxy forms are available at <http://www.whistleblowers.org.au/const/ProxyForm.html>. No member may hold more than 5 proxies.

## Accommodation available for conference delegates

All accommodation is within easy walking distance or a short tram ride from the conference venue.

Economical all day parking is very close to the venue and is \$3.50 per day.

<b>Hotel Y</b>	<b>Room</b>	<b>Bedding</b>	<b>Persons</b>	<b>Standard</b>	<b>Deluxe</b>
489 Elizabeth St Melbourne 3000 Ph: 9326 9622 www.hotely.com	Single	1 single bed	1	\$ 90	\$105
	Twin	2 single beds	1-2	\$110	\$125
	Queen	1 queen bed	1-2	\$110	\$125
	Triple	3 single beds or 1 queen, 1 single	1-3	\$115	\$140
	Apartment	1 queen bed & 1 double sofa bed	1-4		\$130

(To get these rates mention the WBA conference)

<b>Flinders Back Packer Motel/Hotel</b> 35 Elizabeth Street Melbourne 3000 Ph: 9620 5100	Twin-single beds	2	\$58
	Double bed	2	\$58

<b>Elizabeth Tower Hotel</b> 792 Elizabeth Street Melbourne 3000 Ph: 9347 9211 <a href="http://www.elizabethtower.com.au">www.elizabethtower.com.au</a>	Single	1	\$149
	Double	2	\$149
	Queen, 2 singles	3-4	\$210

<b>Queensberry Hill YHA</b> 78-86 Howard Street North Melbourne 3051 Ph: 9329 8599 queensberryhill@yhavic.org.au www.yha.org.au	Private	1 single bed	1	\$62
	Private	1 double bed	2	\$72
	Shared	single bed	3-4	\$30pp

<b>Chapman Gardens YHA</b> 76 Chapman Street Nth. Melbourne 3051 Ph: 9328 3595 chapman@yhavic.org.au www.yha.org.au	Single	1 single bed	1	\$53.50
	Shared twin	2 single beds	2	\$30.50pp
	Double	1 double bed	2	\$61.50
	Dorms	single beds 3-5		\$28.50

Limited Home Share may be available.

Please contact your chosen accommodation directly.

### Law enforcement — an honest cop pays the price

*Weekend Australian,*  
8-9 May 2004, p. 23

FORMER police officer Zhang Yaochun was a “fugitive from injustice,” said the *Far Eastern Economic Review*, on the run from her former colleagues after helping to expose corruption, including illegal sales of police weapons.

She has been hiding from police since 2000 after she cooperated with a nationwide Communist Party investigation into illegal firearms in 1999 that culminated in 45,000 corrupt or unqualified police getting the boot. She detailed abuses of power in her station at Hepu county, Guangxi province, where she saw her superiors using the police armoury to “make money and curry favour” selling or lending guns to local notables, all recorded in notes she kept.

“With so much firepower on the loose, ‘how were we police supposed to protect ourselves, much less the citizenry?’” she asked the *Review*. At the time she was “lumped in with the bad cops” and kicked off the force only to be reinstated, fired again, detained twice and “for most of the past four years has been dodging police who she believes could seize her at any moment.”

A former party official who took part in the investigation and saw her memo said: “She’s been made a criminal, and the impact has been serious. Based on her experience, many people no longer dare to report such problems.”

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### Unfair dismissal claims levelled at Defence Force

ABC Radio, “AM,” Tuesday,  
27 April 2004, 8:08am  
Reporter: Sarah Clarke

TONY EASTLEY: There are more problems this morning for the embattled Australian Defence Department.

Hot on the heels of the Lance Collins affair, Defence has now been accused of mistreating other former and serving personnel in the ADF.

The group, including members of the Navy, Army, Air Force and the SAS, say they were diagnosed with false medical conditions in an effort to silence or to get rid of them. For many, the diagnosis was later challenged by civilian doctors. The ADF denies it’s using the “medical discharge process” to force personnel to quit.

But as Sarah Clarke from the *ABC’s Investigative Unit* reports, up to 200 are now considering a class action.

SARAH CLARKE: After 19 years with the army, Major Mary-Ann Martinek was medically discharged from her unit. She received a commendation for her work, and was second in charge of her regiment.

But she blew the whistle on what she believed was misconduct in the military, and in 2000, she was dismissed on medical grounds.

MARY-ANN MARTINEK: So I’ve had to guess, you know, what that is, because it took me up until August last year to get my entire medical records, so I wasn’t able to take it to any doctor for a second opinion.

SARAH CLARKE: In August last year, she got access through a freedom of information request. Even then, she said there was no specific medical diagnosis.

MARY-ANN MARTINEK: My medical records in my opinion, were adjusted to suit a medical discharge. And because they were adjusted in that way to suit a medical discharge, I was discharged.

SARAH CLARKE: It appears Mary-Ann Martinek is not the only case.

The ABC’s Investigative Unit has been told by members of the army, navy, air force and the SAS who claim they’ve been medically discharged on false grounds.

Warren Leplastrier served in the navy for five years, and was described by his senior naval commanders as a superior able seaman. He was then told he had a sleep-related condition, narcolepsy, a diagnosis that was

rejected by two civilian doctors, and later overturned by the navy.

WARREN LEPLASTRIER: Twelve months ago it was overturned because they said, oh, it was ... our case appears to be weak.

SARAH CLARKE: His father, Peter Leplastrier, is now laying the grounds for class action, with a number of former and serving members claiming unfair dismissal.

PETER LEPLASTRIER: I’ve had in excess of 200, probably close to 250 calls. They just believe they were wrongfully discharged along the same lines as Warren.

SARAH CLARKE: And Major Mary-Ann Martinek says the case is gaining momentum.

MARY-ANN NARTINEK: All this publicity about Lieutenant Colonel Collins, there are more cases coming to light. If this goes ahead, there are going to be thousands, not hundreds, I think there will be thousands.

SARAH CLARKE: So far, Defence says it’s unable to tell the *ABC* how many personnel have been medically discharged, and how many may have been wrongfully dismissed.

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### Poverty and corruption

Urvashi Butalia  
*New Internationalist*, April 2004, p. 5

FOR weeks now I’ve been haunted by the story of Satyaendra Dubey, a young engineer, working in Bihar in eastern India. Dubey was involved in a big project to build roads that are meant to connect all of India — known as the Golden Quadrilateral. The project is also called the Indian Prime Minister’s ‘dream project’.

Dubey was an unusual man — disturbed by the extent of corruption in the project, he did not remain silent. He chose to speak out. But, being realistic, he did not make his anxiety public. Instead he wrote a confidential letter to the Prime Minister, giving chapter and verse about what he had seen and asked that his confidence be respected. Bureaucracy, however, does not care for the individual. Dubey’s

letter did not remain confidential. Soon he lay on the streets of Bihar, a dead man, shot through the head on his way home one night.

There was some outrage at Dubey's tragic death. *The Indian Express*, a national newspaper, campaigned to expose what had happened and to stimulate public protest. The paper collected some 50,000 signatures — an impressive number, though not much in a country of a billion plus. But, then, I didn't sign either. So who am I to question the indifference of others?

In an odd way we've become so used to corruption, fraud and graft that we don't even notice. It seems part of the order of things. There's an index of corruption, compiled by an organization called Transparency International, by which different countries are judged. Our countries — in the South or what used to be known as the Third World — usually occupy the bottom spots. It's often said that there's a link between corruption and poverty — and that's why the poorer countries are so corrupt. But I'm not so sure.

Last week I decided to test this out. I picked up a local newspaper and scoured it for stories of corruption. There was no shortage. Then I looked at a paper from Nepal and one from Pakistan and the result was the same. The next step was to pick up an international paper — international, but mainly with news from the West. The result was pretty much the same. If it wasn't the Parmalat scandal or Silvio Berlusconi's adventures with the law, it was contracts in Iraq for US companies. The only difference was one of scale. In some instances (largely in the South) we're talking small money; in others (largely in the North) we're talking mega money. But this is small comfort — the problem doesn't disappear because the scale is small.

So what does poverty have to do with corruption? A fair amount I think. If you're poor, badly paid, exploited by the system and denied your rights, arguments for 'good citizenship' or a 'civic sense' don't really hold. You take what you get because whatever you can get is more than you've got. If it's possible to earn a little more by duping the system, why not do it?

I'm not excusing corruption. But there is a way to understand the

harassed traffic cop on a busy road who's been inhaling dust and grime all day, who has a family to support and who earns barely enough for one person, who then quietly pockets a few rupees held out to him.

On the other hand there's no way you can excuse a Prime Minister pushing through legislation that makes him immune from prosecution; or a President offering post-war contracts to his friends; or a contractor siphoning off millions and resorting to murder to continue doing so. Equally, there's no way to excuse our own indifference — all too often corruption is blatant, open, shameless. And the practice continues because we don't protest or fight it when it's possible to do so.

There are examples of things that have made a difference. In South Korea several years ago a group of lawyers set up a website where they listed the names of all politicians accused of corruption. It's said that 75 per cent of those men (and they were all men) were unable to stand for election as a result of the publicity.

In India, Satyaendra Dubey's death was quickly followed by two more. A young couple trying to bring basic services like water to poor villages discovered that endemic corruption was robbing the villagers blind. When the couple was murdered, hundreds of villagers protested their deaths. Following a tradition that the death of a dear one is mourned by men having their heads shaved, every single male in one village had himself tonsured — even as the police hesitated to file a case. Sometimes symbolic protests are as important as material ones.

Since Dubey's death I've been thinking that the biggest fight is against our own indifference, our acceptance of corruption as something that just is. It took the loss of a young man's life to make me realize this. There has to be another way that doesn't involve paying such a heavy price.

**Urvashi Butalia** is an Indian writer and publisher. She lives in New Delhi.

## Court quashes brothers' convictions for 1982 Perth Mint swindle

The Mickelbergs have finally won their legal battle after eight appeals.

by Andrea Mayes and David King  
*The Australian*, 3 July 2004, p. 8

AFTER 22 years, Ray and Peter Mickelberg were finally vindicated yesterday when a West Australian court quashed their convictions for the 1982 Perth Mint swindle.

In a 2-1 decision, the Court of Criminal Appeal found in favour of the brothers after corrupt former detective Tony Lewandowski admitted fabricating their confessions.

There was a sense of anticlimax as Chief Justice David Malcolm read the decision to a hushed courtroom, owing to the absence of the brothers.

Instead, the pair employed celebrity agent Harry M. Miller to handle their publicity.

Mickelberg advocates hailed the decision as a triumph of justice but the West Australian police maintained there remained ample evidence of the brothers' guilt.

The Mickelbergs are suing the state for malicious prosecution and may also be eligible for an ex-gratia compensation payout for wrongful conviction.

Attorney-General Jim McGinty said the state would consider an application for compensation by the Mickelbergs, but would have to take into account the \$578,000 already spent funding their appeals.

It was the eighth appeal for the Mickelbergs, who together with a third brother, Brian, were found guilty in 1983 of stealing 68kg of gold — then worth \$650,000 — from the mint.

Ray Mickelberg served eight years of a 20-year sentence and Peter served six years of a 14-year term.

Brian Mickelberg's conviction was overturned on appeal in 1983 after he had served nine months of a 12-year sentence. He died in a 1986 plane crash.

In their decision, Justices Malcolm and Christopher Steytler said much of the police evidence was unreliable and there was "a significant possibility" the jury in the original trial would have

acquitted the brothers, in light of Lewandowski's confession.

"In my opinion there is now a very serious doubt as to the police evidence," Justice Steytler wrote. The possibility of a retrial was rejected.

Dissenting Justice Michael Murray said he believed the evidence against the brothers remained compelling, despite Lewandowski's admissions.

In sensational new evidence first detailed in a June 2002 affidavit, Lewandowski said he and former CIB chief Don Hancock had bashed Peter Mickelberg while interviewing him in 1982 and fabricated the brothers' confessions.

Lewandowski committed suicide in May, just six weeks before yesterday's decision.

Outside court, Ray Mickelberg's lawyer Malcolm McCusker QC described the decision as "a great day for WA justice".

Lewandowski's mother, Irene Burns, said she was happy with the verdict and proud of her son.

"He was never a corrupt cop. He came forward, he told the truth. Other detectives could have done exactly the same thing but they didn't have the guts."

West Australian police commissioner Mel Hay was disappointed by the decision and refused to apologise to the Mickelbergs for their treatment.

[Avon Lovell, long active in Whistleblowers Australia, wrote the 1985 book *The Mickelberg Stitch* that raised questions about the police case against the Mickelbergs. The WA police launched numerous defamation actions to keep the book away from readers. Avon was the one who prompted Tony Lewandowski to admit to framing the Mickelbergs. — *editor.*]

## Whistleblowers' green light

Protection for whistleblowers in Australia's private sector has been a long time coming.

Andrew Murray

*Illawarra Mercury*, 3 July 2004, p. 35

TWO remarkable and historic accountability mechanisms came into law last week.

For the first time ever, Australia's private sector got whistleblower protection.

The importance of this should not be underestimated.

Employees who would otherwise be intimidated into keeping quiet for fear of losing their jobs can now blow the whistle on corruption and crime in the private sector.

A compensation and protection regime now exists to safeguard their welfare.

The Federal Government has the weakest public sector whistleblowing legislation in the country. Yet in a remarkable development, obviously finally sick of corporate malfeasance, they introduced strong whistleblower protection into corporations law.

The Australian Democrats seized the opportunity and in the same week used their balance of power position to replicate those laws and persuade the Government to accept them as amendments to Workplace Relations law.

Now corporations, unions and employer organisations all have whistleblower protection.

Only unincorporated associations and the not-for-profit private sector still lack whistleblower law.

We badly need those laws in these sectors, too. How else to help get at the embedded practice of church complicity in concealing crimes against children?

Over the last decade the Australian Democrats have campaigned for strong whistleblower protection laws in both the private and public sectors.

We have introduced strong public sector whistleblower protection legislation for debate in the Senate, but it languishes on the notice paper. The Government remains indifferent to it.

Which makes the corporations and workplace relations initiatives all the more dramatic and heartening.

Hopefully an early use of these new protections will be in the building and construction industry. Now union members and company employees can blow the whistle on crime, corruption, fraud, and thuggish practices in that industry.

Lawlessness and corruption cannot properly be addressed without whistleblower protection mechanisms in place.

If you are fighting criminality or corruption in the workplace you need to encourage disclosure in the public interest.

An effective whistleblower protection scheme serves the public interest by exposing and eliminating fraud and impropriety.

Public sector disclosure laws are quite effective in most States and Territories, but are poor in the Federal arena.

Private sector disclosure laws have been non-existent, but there have been useful private sector initiatives aimed at self-regulation. The commercial world has come to realise that encouraging whistleblowing reduces impropriety and increases productivity.

In the last few years, major audit and accounting groups such as Deloitte Touche Tohmatsu, Ernst & Young, PricewaterhouseCoopers and KPMG have established procedures that allow employees to blow the whistle anonymously to auditors on corporate fraud, corruption or theft.

The Australian Stock Exchange's Corporate Governance Council recommends listed companies provide mechanisms for employees to alert management and the board to misconduct without fear of retribution.

Witness protection schemes are a poor substitute for disclosure laws. Often disclosure is not such as to need witness protection, and witness protection schemes do not address the need to protect people's jobs.

Impropriety will only be uncovered if the people in a position to reveal it are genuinely protected, and compensated where appropriate.

Whistleblowers show great courage in exposing the corrupt and the improper.

Victimisation, exclusion, harassment and derision are all too common experiences for whistleblowers.

Laws are needed to establish and enhance the legal rights of whistleblowers. They perform a valuable and essential public service.

Whether it is unions, churches, corporations or governments, people need to be able to come forward safely when they encounter wrongdoing.

Whistleblowing is very much in the public interest.

It will always take considerable courage. The law is increasingly recognising and rewarding that courage.

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## Canada sacks three whistle-blowing scientists

Reuters, 15 July 2004

WINNIPEG, Manitoba — The Canadian government fired three high-profile scientists to punish them for publicly challenging federal decisions on veterinary drugs, the scientists' union said on Thursday.

But a spokesman for Health Canada said the dismissal of Margaret Haydon, Shiv Chopra and Gerard Lambert had nothing to do with their whistle-blowing activities.

"There is absolutely no connection," said Ryan Baker, a spokesman for the department, where the scientists worked in a section that reviews and approves veterinary drugs.

"This is not because of anything they may have said publicly," Baker said.

The scientists have a lengthy history of disagreement with the department, which has reprimanded them in the past.

Haydon and Chopra spoke out against a growth hormone for dairy cattle, called bovine somatotropin, that Monsanto Co. unsuccessfully applied to sell in Canada in the 1990s.

They said the company did not submit enough information to prove the drug was safe for cows or humans, and complained they were pressured by the department to approve it.

More recently, Chopra and Lambert complained the department approved a new method of use for the

antibiotic tylosin, marketed by the Canadian animal health division of Eli Lilly and Co., despite their concerns that it could lead to antibiotic-resistant bacteria.

Haydon also criticized livestock feed rules in the wake of Canada's first homegrown case of mad cow disease last year.

The precise reasons for the firings were outlined in letters delivered to the scientists at their homes on Wednesday, Health Canada's Baker said, declining to elaborate for privacy reasons.

"The individuals in question are able to share it with you if they choose to," Baker said.

Chopra declined comment and referred questions to his lawyer, who in turn referred calls to the scientists' union, the Professional Institute of the Public Service of Canada.

The union's president also declined to discuss the reasons given by Health Canada until a hearing is held, possibly in six months.

"We will be addressing what Health Canada has put in the letters and we will be showing that, despite what they say, the real cause of the letters of termination is the public criticism of the department and the government of Canada," Steve Hindle said.

"The fact that it's three (people fired) on the same day is unusual, and it also, I believe, lends credence to the argument we're putting forward that (the firings are) a result of them being whistle-blowers," Hindle said.

The firings outraged activist groups who said whistle-blowers need better laws to protect them.

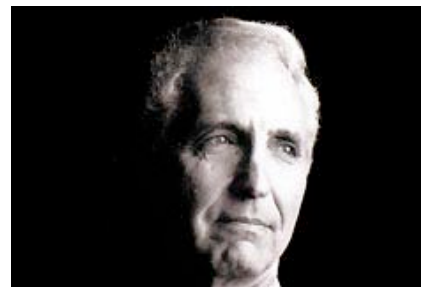
"All these scientists were trying to do was protect the food supply, and they got fired for doing their job," said Bradford Duplisea of the Canadian Health Coalition.

The federal government had introduced new measures to protect bureaucrats who report concerns about their departments, but the proposed legislation was not enacted before the June 28 federal election.

## Daniel Ellsberg sees a new trend — telling all while the issue is hot

Matthew B. Stannard  
*San Francisco Chronicle*,  
29 March 2004, p. A1

When famous whistle-blower Daniel Ellsberg boarded a plane to Cincinnati earlier this week, he took along a little light reading: a stack of articles about former counterterrorism czar Richard Clarke, who has stirred controversy with allegations in his book and testimony before a special panel that the Bush White House was somewhat indifferent to al Qaeda before Sept. 11 and obsessed with Iraq afterward.



Ellsberg [pictured], who in 1971 leaked the Pentagon Papers documenting government misrepresentations about the Vietnam War, sees Clarke as part of a trend: well-placed individuals in the government who have gone public with books or interviews outlining their concerns and criticisms about their country's government — while that government is still in power.

Ellsberg is not alone in that observation — observers from across the political spectrum, whether they support Clarke's actions or not, agree that a new willingness exists to tell all far sooner, and far more publicly, than in the past.

Ellsberg cites officials such as Scott Ritter, the former lead inspector for the U.N. Special Commission on Concealment and Investigations team, and Katharine Gun, a British government linguist who leaked an e-mail purportedly from U.S. intelligence services asking for help spying on U.N. ambassadors.

Opinions differ on whether the willingness to tell all is a good thing, but to Ellsberg, who has been sharply



critical of the war in Iraq and even written articles encouraging current government employees to leak what he calls "Iraq's Pentagon Papers," the phenomenon is a source of optimism.

"I think these people are heroes. They're really acting appropriately in a very dangerous situation," he said. "It's as if we are learning about the Tonkin Gulf a month or two later instead of years later."

Although Ellsberg, now 72 and living in Kensington, considers Clarke somewhat of a kindred spirit, he doesn't quite see him as a whistleblower. Clarke was no longer an employee of the administration when he spoke out and did not provide documentation to back up his accusations — accusations the administration has rejected.

Ellsberg said the only real whistleblower of recent times is Gun, who briefly faced charges under the British Official Secrets Act and supported her claims with documents.

"I find her really admirable," Ellsberg said, but he considers the rest remarkable, too, for being willing to go public in a way and with a speed that simply didn't occur 40 years ago.

"Why are they acting differently from people in my generation?" he said. "We knew (Vietnam) was just as deceptive and the policy was just as bad, but we certainly weren't tempted to leak."

At least, not until Ellsberg did it. But since then, a number of observers said, going public early and often has become more and more acceptable, even among ranking government officials.

It certainly wasn't acceptable in the 1950s, said Stephen Hess, who was a speechwriter for President Dwight Eisenhower and is now with the Brookings Institution in Washington, D.C.

"It was a rule of thumb that no one spoke until the president did. When the president wrote his memoir, told his story, that was when the others did," Hess said. The exceptions, he said, were books that were rarely very critical — and even then, they were considered scandalous.

"We on the staff thought that was just in such poor form ... it just wasn't done," he said.

The ideal at the time, Hess said, was the White House staff described by pre-World War II political scientist Louis Brownlow, who recommended that President Franklin Roosevelt's staff should "remain in the background, issue no orders, make no decisions, emit no public statements ... They should be possessed of high competence, great physical vigor, and a passion for anonymity."

That changed markedly with the release of the Pentagon Papers. Another step came, Hess said, during the administration of President Jimmy Carter, who was criticized in public by some former staffers and was himself critical of his predecessors and later his successors — another taboo. After that, the genie was out of the bottle.

"Over time, it became an avalanche. By the time you reached Clinton, you had people that secretly had book contracts," he said. "You had people sitting around the table keeping notes."

Both former Clinton political consultant Dick Morris and former senior adviser George Stephanopoulos had books published while Clinton was still in office.

But Clarke's book, because of his position, may be taking the trend to a new level, said Peter Berkowitz, a research fellow at the Hoover Institution and an associate professor of law at George Mason University Law School.

"I do think what Clarke has done is really unprecedented in our history: somebody who served as a national security adviser to the president stepping down and, while that president is still in office, blasting him," he said. "That just hasn't been done before."

It is also surprising, Berkowitz said, that comments by Clarke, O'Neill, and Hans Blix, the former U.N. chief weapons inspector in Iraq, have such an impact on public policy and public discourse — even though, in his opinion, they fit into the category of disgruntled ex-employee as comfortably as whistleblower.

"That's actually one reason, it seems to me, to take this criticism with a grain of salt," Berkowitz said.

But regardless of the motivation, telling all is probably going to be increasingly popular, said UC

Berkeley political science Professor Bruce Cain, for commercial reasons if not ideals.

It is increasingly difficult, because of conflict-of-interest laws, for former government officials to move easily back and forth between the government and the private sector, and the growth of cable and the publishing industry ensures that they can seek lucrative post-government employment in the media, Cain said.

And because books sell better when the author's name is fresh in people's minds, he said, it is likely such books will continue to be published as soon as possible — and sooner all the time.

"It's part of this whole speeding up of the cycle of everything. Now, even our memories have to come faster," he said.

Michael Kohn, general counsel for the private National Whistleblower Center, agreed with Cain's prediction of faster and faster revelations, but with a different premise.

"You're seeing an evolution of our society. Ellsberg is essentially the first modern whistle-blower. As a result, the news media observed how important obtaining this type of information was and how it was the ultimate lifeline to a free society," he said. "As this message began to take root, the will of people to expose information at an earlier point of time has just gone with it."

The main brake on the phenomenon, Kohn said, are federal laws that he feels inadequately protect people who try to speak up while still employed, causing more to delay revelation until they quit or are fired.

With more protective laws, he said, "you would have heard from (Clarke) before Sept. 11."

Hess and Berkowitz said the consequences of this new willingness to tell all include the loss of a kind of loyalty in government service that had been a tradition, and the possibility that future administrations may appoint more party loyalists and be less willing to keep on longtime civil servants from prior administrations.

"There is a very good reason why there is executive privilege and why a president should feel they have a right to receive confidential information



from their aides and that their aides owe" loyalty to them, Hess said.

But to Ellsberg, the fact that a number of Bush's own people have been willing to break that presumption of loyalty is a strong condemnation of the president and his neo-conservative allies, something Clarke himself has hinted at in public statements.

Asked on "60 Minutes" whether he owed loyalty to the president, Clarke responded, "Up to a point. When the president starts doing things that risk American lives, then loyalty to him has to be put aside."

### THOSE WHO TOLD

Daniel Ellsberg, who leaked the Pentagon Papers three decades ago, cited these people as part of what he sees as a new trend of those who criticize governments still in power:

— Scott Ritter, the former lead inspector for the U.N. Special Commission (UNSCOM) Concealment and Investigations team in Iraq.

— Hans Blix, the former U.N. chief weapons inspector in Iraq.

— Former Treasury Secretary Paul O'Neill, whose January book about his tenure inside the Bush administration was based, in part, on classified documents.

— Rand Beers, who quit as President Bush's antiterrorism adviser to become John Kerry's foreign policy adviser.

— Joseph Wilson, a former ambassador who investigated whether Iraq tried to buy uranium from Niger and later publicly accused the White House of manipulating his findings.

— John Brady Kiesling, a career U.S. diplomat who resigned to protest the Bush administration's policies on Iraq.

— Ray McGovern, a retired CIA analyst on the steering committee of Veteran Intelligence Professionals for Sanity.

— Robin Cook, a former British foreign minister who quit and wrote a book saying the threat of Iraq was overblown.

— Katharine Gun, a British government linguist who was charged under the British Official Secrets Act for leaking an e-mail purportedly from U.S. intelligence services asking for help spying on U.N. ambassadors.

— Anthony Zinni, retired Marine general and former U.S. commander for the Middle East who has criticized the handling of postwar Iraq.

— Clare Short, a former international development secretary who resigned from British Prime Minister Tony Blair's government in protest after the invasion and later said she had seen transcripts of bugging of Kofi Annan's office.

— Karen Kwiatkowski, a retired lieutenant colonel formerly assigned to the Pentagon's Office of Special Plans who wrote an article critical of the war on the online site Salon.com — entitled "The New Pentagon Papers."

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## Government owes apology: whistleblower

Steve Pennells  
*West Australian*, 16 July 2004

A whistleblower who accused the Government of ignoring major fraud for three years said yesterday she had been vindicated after police laid charges over alleged roting of Aboriginal health funds.

Health Department officer Jean Thornton broke her three-year silence with a scathing attack on the Government, saying she had first gone to senior health officials with her suspicions of fraud more than three years ago.

She claimed the Government had refused to act and the then health minister, Bob Kucera, had warned her about the dangers of defamation because her allegations were untested.

Ms Thornton went public yesterday after an independent audit uncovered almost \$1 million lost from the WA Aboriginal Community Controlled Health Organisation between 1999 and 2001.

She said the alleged fraud was among a number of concerns she had taken to department chiefs in 2001.

"It could all have been fixed up quite easily when I first raised it," she said. "The first instinct of government departments now is to hush things up. That is the first thing to do when you raise an issue." She demanded an apology from Premier Geoff Gallop,

Mr Kucera and senior health bureaucrats. Mr Kucera would not comment.

Dr Gallop said Ms Thornton's treatment was being examined by the Commissioner for Public Sector Standards and the process should be allowed to take its course.

Ms Thornton was at the centre of a political row last year over the treatment of whistleblowers, with the State Opposition saying she had been pushed to one side and threatened because of her efforts to expose alleged code breaches in the Health Department and potential fraud.

At the time, Opposition Leader Colin Barnett accused the Premier's office of trying to discredit her. The allegations, made under the protection of parliamentary privilege, were angrily rejected by Dr Gallop.

A few weeks later, Ms Thornton hand delivered an 11-page letter to the Department of Premier and Cabinet criticising Dr Gallop and Mr Kucera for their handling of her claims of fraud in the Aboriginal health organisation.

Public Sector Standards Commissioner Maxine Murray's report into Ms Thornton's treatment by the Health Department is expected to be tabled when Parliament resumes.

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## Do you copy?

Susan Cheever  
*Sydney Morning Herald, Good Weekend*, 12 June 2004, p. 39

What gives someone the strength to question authority? What makes it possible to ignore peer pressure and act according to conscience? Is the ability to do this a character trait, does it come from education, or is it something parents instil in their children?

Two famous psychological studies have shown that when people are given power over others, most of them will abuse it. Literature, from *The Count of Monte Christo* to *Lord of the Flies*, illustrates this unbearable truth. The desire to follow authority, combined with a will to conform, creates a dark, dark side of human nature. In a study done at Yale in the early 1960s, Dr Stanley Milgram's subjects willingly delivered an apparently painful dose of electricity to actors who pretended to

be writhing in pain. Their excuse? They were instructed to do so by a scientist in a white lab coat. In a study at Stanford University in 1971, subjects who were asked to play the role of “guards” with control over other subjects who played the role of “prisoners” soon became sadistic.

What would you do in a situation like that? What would your children do?

We pay lip service to nonconformity, but all the evidence points in the other direction. From fashion fads to much more important things, such as cars and even schools, we all behave as if value comes from imitation. We buy the bestsellers. In the summer we listen to the same music on the same iPods. In the winter we are sheep in sheepskin clothing. If we are so proud of having choices, how come we all choose the same thing? We say we despise conformity, but we say it in unison. Even our schools teach the ability to conform in order to pass the exams. When we talk about wanting the best for our children, don't we mean that we want them to have what other children have? I certainly do.

Looking for an ice-cream cone one recent sunny day, my son and I passed two long lines. Then we stopped at the window of a gourmet store. Their ice-cream freezer glimmered in the dim light. The store was empty except for a saleswoman stocking shelves at the back. “It can't be good,” we agreed. I know that I sold my own soul long ago — probably the day I bought my first Gucci loafers because they looked so good on a friend of mine. But I wonder if I have raised my children to conform as I do.

Those who follow the voice of conscience often get punished by the community whose rules they must defy. Whistleblowers get fired whether they have the courage to publicise the fact that nicotine is addictive, or the temerity to take on a crooked corporation, or the nerve to photograph coffins draped in flags. We hear about them in the news, give them a moment of silent thanks for their courage, and then forget about them as we scramble to keep up with the Joneses.

I remember my daughter as a little girl. At birthdays she would never join the singing circle; she preferred to sit in a corner, playing with her bear. She

hated pink. At kindergarten she clung to me long after the other kids had cheerfully waved “bye-bye” to their perfect parents. It was hard not to pressure her to be one of those little girls in pink who sang along while their mums smiled proudly. I did pressure her, but because I had been a disastrous child myself, I sometimes let her be. It was excruciatingly hard. That's all I'm trying to say.

We can say we admire those who march to a different drummer, but in fact being different is hard, harder than most of us can imagine, so hard that it often destroys the people who manage it. That's all.

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### Flight risk

Under pressure from the airlines, federal managers are loosening airport security rules and compromising passenger safety.

Michael Scherer  
*Mother Jones*,

July/August 2004, pp. 15-17

Both men knew what they were witnessing could bring down a plane. Over the [late November] 2003 Thanksgiving holiday, Thomas Bittler and Ray Guagliardi [pictured], federal training coordinators at Buffalo Niagara International Airport, were helping examine outgoing luggage. Bittler, whose airport security expertise had earned him an award for excellence, recalls watching as screeners repeatedly failed to test bags for explosives as required by federal law. When alarms sounded, signaling suspicious bags, screeners did only cursory inspections. Guagliardi remembers telling Bittler, “I've seen so many violations, I don't know where to begin.”



The two men, employees of the Transportation Security Administration (TSA), reported their concerns to their boss. But he didn't want to hear about it, telling them that they were responsible for assisting screeners, not supervising them. So they wrote a letter detailing their concerns to the agency's headquarters in Arlington, Virginia. Two months later, they were out of work. A TSA spokeswoman says their positions were eliminated because of a staff reorganization. But both men say TSA officials told them that they should never have complained. According to Bittler, one supervisor said, “If you people would just learn to shut your mouths, you would still have your jobs.”

[...]

Guagliardi and Bittler, however, have a different idea of what it means to do the job. They have filed for federal whistleblower protection status, making them 2 of 45 former TSA employees who have claimed wrongful termination to the U.S. Office of Special Counsel. Both say they want to honor the oath they took when starting at TSA — that safety would be their top priority. Guagliardi left his teaching career to do airport security because he was too old at 38 to enlist in the military. “I thought it was my generation's time to step up,” he says. Every day at the airport, he kept a pin in his pocket commemorating the 9/11 hijacked planes. Bittler had been a security expert in the Air Force Reserve before he moved his family from Ohio to New York so he could work at the Buffalo airport. “The whole purpose behind the 9/11 Commission is to make sure that it never happens again,” he says, exasperation straining his voice. “It's going to happen again. Nobody is doing anything.”

### **WBA action**

Mary Lander

I'd like to take the opportunity of extending my personal thanks to members of WBA for making available articles on whistleblowing on their website and in particular to Brian Martin for his publications available at <http://www.uow.edu.au/arts/sts/bmartin/dissent/documents/>.

I was not a WBA member when I first read these articles. However, reading these articles helped me put things into some perspective during a period in which I was the subject of victimisation. Most people who have been through it can appreciate just how distressing it is. It's even more distressing when you find out just how little the authorities (who purport to be there to ensure that delegations and authorities, bestowed on management, are not abused) are actually prepared to do about it.

I'd also realised, when researching the subject, just how widespread this problem really is and was easily able to draw parallels between the various commonly used tactics identified and the treatment I had been subjected to. How easy it is for management to bypass "guidelines on procedural fairness." Without a doubt, these guidelines are only put up for window dressing. There is no obligation for management to follow published guidelines and no requirement to explain why guidelines are not followed. As matters stand, guidelines appear to be false and misleading administrative devices which can be ignored altogether in the event it suits management's purpose to do so. Guidelines are simply not worth the paper they're written on.

The system has been designed to favour those who belong to the dynasties of power — there is no doubt about that. Power is everything to them. The interests of the public and what they do to employees is only a secondary consideration (if it's a consideration at all).

While it was 18 months ago now that I was victimised, it's still the first

thing I think of when I wake up in the morning and the last thing I think of before I go to sleep at night. It's not something that you can easily forget or leave behind. It's changed my life, my perspective on reality and my priorities. Perhaps one day those in power will realise that injuries of the non-physical type can be the cruellest of all. They just never seem to heal.

Rather than become just another by-product of "the system," I'd rather be pro-active and have offered to assist Peter Bennett, WBA Vice President, in Canberra. At the risk of embarrassing Peter, I'd like to also take this opportunity of saying what a wonderful job I think he's done in pursuing issues regarding the victimisation of whistleblowers with various authorities — who will have no choice other than to listen eventually — and in representing the organisation at various forums such as the parliamentary public discussions on the Commonwealth Public Interest Disclosures Act. For those that may be interested, the transcript can be found at <http://www.aph.gov.au/hansard/senate/commtee/s5488.pdf>.

Suffice to say I'm pleased to be associated with the organisation and hope I can help add some value to the good work that has already been done. As a great man, Ralph Waldo Emerson, once said, "Ideas must work through the brains and the arms of good and brave men [and women], or they are no better than dreams."

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### **Bulletproof government lies: how much longer?**

Keith Potter

Two months ago I provided to an officer of the federal Department of Attorney-General evidence that a senior ranking Commonwealth official committed perjury on two occasions in relation to Bill Toomer, and the consequent damage to him. My letter also mentioned non-implementation of a Royal Commission formal recommendation for independent outside inquiry to ensure justice for Bill, whose case was reported as having

"raised wide and important considerations for the Commission."

During related telephone discussions I felt that the officer was honest, sympathetic to Bill's case, and genuinely wished to assist. Nothing further was heard from that officer.

In early August I received three short paragraphs from an Acting Assistant Secretary who stated baldly, and without denying any of my evidence, that neither the Attorney-General nor the Department could assist. [Why is it that difficult representations are usually answered in this manner by acting assistant secretaries? No prize for correct answer.]

I replied that the Attorney-General could either instruct implementation of the royal commission recommendation or recommend Cabinet or the relevant parliamentary secretary to compensate Bill.

Successive government members and ministers have repeated public service lies about Bill's case over the past 31 years, the last significant occasion being in 2001. On that occasion the relevant parliamentary secretary based refusal of compensation on false information. When advised of the correct facts he ignored them and continued to act in accordance with public service advice.

Bill's solicitor appealed under several provisions of the Administrative Decisions (Judicial Review) Act, including that the decision could not have been reasonably reached by any reasonable person.

Two days before the Federal Court hearing, Bill's solicitor was told by the Australian Government Solicitor that their barrister, Richard Tracey QC, had suddenly discovered that he was double booked and had been replaced by Tom Hall. Richard Tracey knew Bill's case intimately, having represented the Commonwealth throughout a crucial 40 day AAT hearing, and been consulted on other occasions. To the best of our knowledge Mr Hall had no prior knowledge of Bill's case.

Twenty minutes before the start of the one-day hearing the Australian Government Solicitor handed to Bill's solicitor, Alan Munt, a document headed "Outline of Written Submis-

sions of the Respondent.” It was signed by Mr Hall. Pressed for time and occupied with other aspects, and having studied the respondent’s submissions beforehand, Mr Munt understandably took the document at face value and did not read it. The respondent’s prior submissions were somewhat vague in regards to the reasons for refusal of compensation, and had been countered in Mr Munt’s submissions.

Upon reading the ‘Outline’ after the hearing, Mr Munt promptly faxed copy to me. Paragraph 21 compressed the reasons for refusal of compensation into five very brief, clear and succinct sentences, four of which were totally false. The fifth was a grossly misleading half-truth.

Mr Munt promptly sought leave to submit an affidavit by Bill in rebuttal. Leave was refused. The Court disallowed the application for judicial review, on the basis that the parliamentary secretary had acted in accordance with public service advice!

My complaint to the Attorney-General of lies told to the court by the Australian Government Solicitor was rejected on the grounds that the AGS was simply explaining the Parliamentary Secretary’s reasons for disallowance. Whilst technically correct, the matter of lies told by public officials was not addressed, and based on the previous 31 years experience, never will be addressed objectively.

Bill’s case is but one of numerous whistleblower cases that are driving government to do some window dressing, most of which is obviously defective. It is no accident that each of the various legislations, and proposed legislations suffer the same basic defects! For example, there is no protection if disclosure is made to a parliamentary minister or member.

Most cases that are proven beyond doubt remain unresolved because none of the various Australian governments genuinely wish to encourage public interest whistleblowing.

Nor is it any accident that honours lists never include prominent public interest whistleblowers. Judges are blind to the selfless and enormous contribution to the Australian public by individuals such as Dr Jean Lennane, Christina Schwerin, David

Berthelsen, Catherine Crout-Habel, etc.

Governments don’t recognise the waste of public funds and damage to themselves incurred by refusal to settle longstanding nationally known whistleblower cases such as those of Mick Skrijel, Tony Grosser, Jim Leggate, Kevin Lindeberg, Ray Hoser, Bill Toomer, etc. Until such individuals are compensated, or at least accorded justice that is seen to be just, the reputations of successive governments will continue to be damaged.

The two major parties will never be genuinely and significantly concerned for truth in government until it is established by election outcomes that that this is a pivotal issue for swinging voters. Please God, let the recent public statement by 43 former diplomats and military persons speaking up for truth in government prove the catalyst.

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## **NSW’s Independent Commission Against Corruption — time to go!**

Jean Lennane

NSW’s ICAC is in a dramatic phase. For the second time in its 16-year life it has a NSW Premier in the gun. Nick Greiner in 1992 was found guilty of corrupt conduct and forced to resign. Now twelve years later Bob Carr is in trouble for contempt of court, having made very public, unsolicited remarks claiming his health minister had been cleared by evidence given to an ICAC inquiry, long before the inquiry or the evidence was complete. ICAC also recently has made life difficult for a couple of other NSW parliamentarians, one of whom was forced to resign.

Could a body that clobbers arrogant or unethical politicians possibly be anything but highly desirable? Unfortunately such activities have been extremely rare, whereas from its inception ICAC has routinely clobbered the hundreds of whistleblowers naive and foolhardy enough to go near it. It has investigated only a tiny fraction of matters reported to it; has never tackled anything related to organised crime; refused in 1993 to act on our information that corrupt police

were working there; and unlike its Hong Kong counterpart, has always been willing to accept a claim of ignorance by the CEO of a corrupt organisation as a valid defence.

In 1995 a survey of our members who had reported corruption to ICAC found 95% rated ICAC’s performance as ‘very bad’ or worse. Many had suffered severe damage from their confidentiality having been breached. (An extreme example of such damage was a letter from ICAC in 1994 to Fairfield City Council informing them of local MP John Newman’s confidential complaint of corrupt conduct against councillor Phuong Ngo. Newman was shot not long after. Phuong Ngo was later convicted of the murder.)

The response of the then Commissioner, Barry O’Keefe, was that our survey was not representative. This was true, in that it was not a random sample, but after ICAC later did its own random and much larger survey, we were contacted by a whistleblower within ICAC who claimed their report, ‘equally damning’, was being suppressed. It was never released in full.

When current Commissioner Irene Moss took over, she to her credit asked for a meeting with WBA, to try to address some of our concerns. It appeared at that meeting that she shared some of them, and in particular had found the culture at ICAC, and attitude towards and treatment of whistleblowers, very different from the NSW Ombudsman’s office. It also appeared that she genuinely intended to try to improve matters.

Unfortunately that didn’t happen. The Kite inquiry, which happened while she was in charge, was a new low from an organization whose cost-effectiveness and continued existence WBA has been questioning for many years. John Kite had blown the whistle on the National Parks and Wildlife Service’s alleged attempts to prevent his giving embarrassing evidence of its negligence to the inquest into the Threadbo disaster. The inquiry, after investigating him rather than his allegations, found he had forged a NPWS memo that appeared to confirm them. The memo said, among other things, that “If he goes to ICAC we get our contact to deal with it.”

ICAC's recommendation in December 2001 that Kite should be prosecuted for allegedly forging the memo was left in abeyance until August this year, when it seems they decided to press on with it. Interesting timing, in that there is currently an inquiry into ICAC's future, prompted by Commissioner Moss' imminent retirement, and widespread dissatisfaction with its performance. Typical, unfortunately, that when needing some action to help justify its existence ICAC appears to have chosen to continue crucifying a whistleblower.

Among its many other problems, ICAC and its commissioners have seemed to have great difficulty recognising conflicts of interest. Some examples:

1. The Kite 'smoking gun memo' mentioned above. One would think a memo that talks about getting our "contact in ICAC to deal with it" should not be investigated by ICAC. How could you be sure it wasn't the contact doing the investigation? Indeed it is hard to imagine that a contact, if there actually was one, could have organised a more favourable outcome.

2. The basic conflict involved in the same body doing education/prevention of corruption, as well as investigating it. Obviously the more corruption you find, the less effective your education/prevention must be. By investigating and finding so little corruption, ICAC can claim it's doing a great job of education/prevention.

3. The conflict involved in the previous commissioner Barry O'Keefe continuing with various external roles during his term, notably as head of the National Trust. When someone complained to ICAC about the Trust allegedly misusing a legacy, O'Keefe claimed the conflict was adequately addressed by his delegating the investigation to another (necessarily junior) officer. No prizes for guessing the outcome.

4. The conflict involved in the current commissioner, Irene Moss, being married to the head of Macquarie Bank, a major developer and political party donor, while ICAC produces reports like "A Guide to building ethical business relationships between NSW public sector organisations and the private sector". How could ICAC properly and impartially

investigate any unethical matters involving banks, developers, political donations, and their relationship with NSW government policy and practice while a close relative of the commissioner is so prominently involved?

ICAC in my opinion has been an expensive and damaging failure. We would be much better to have royal commissions as and when needed, rather than a standing body that so rapidly can become part of the problem rather than part of the solution.

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## Dissent and whistleblowing

Brian Martin

"If only those complainers would just get in line, then we could get on with the task and be more effective." Have you ever heard this sort of comment? The underlying assumption is that agreement, cooperation, consensus, conformity — whatever term you want to use — is beneficial for the group. Consequently, those who challenge orthodoxy are deemed to be selfish.

Actually, the reality is exactly opposite, according to a readable book by Cass R. Sunstein titled *Why Societies Need Dissent* (Harvard University Press, 2003). Sunstein says that "Much of the time, dissenters benefit others, while conformists benefit themselves." (p. 6) Whistleblowers certainly know that they seldom benefit from their disclosures; more commonly they are ruthlessly punished.

In making the argument that dissent benefits society, Sunstein describes fascinating research on group dynamics. Many findings show how readily people will conform, even going so far as to deny evidence staring them in the face. This propensity to conform leads to *social cascades*. In one type of social cascade, an *informational cascade*, people base their beliefs not on what they know themselves but on what other people do or say.

For example, most scientists will make their judgements about fluoridation or global warming based on what a few experts say, not on their own independent assessment of the

evidence. The same can apply in politics, business and other areas. The result can be an appearance of unanimity when actually the information base is limited. A single dissenter or, even better, a group of dissenters can puncture this cascade and lead to better decisions.

Another sort of cascade occurs when people know that a belief is wrong but nonetheless go along with the majority in order to keep in their good books. This is called a *reputational cascade*. Bullying at work has occurred for decades, but for a long time few people spoke out about it: they knew it was wrong but they didn't want to go against prevailing opinion — or what they thought was prevailing opinion. Actually, most people dislike bullying. Dissenters break the silence and benefit others.

Sunstein says "Freedom of speech provides the key safeguard against senseless cascades. It opens up space for dissent by forbidding government from mandating conformity or from insulating itself, and citizens generally, from disagreeable, unwanted, and even offensive opinions" (p. 96). To this should be added that freedom of speech is also needed inside organisations. It is not just governments that mandate conformity: corporations, schools, police forces and other organisations can be just as intolerant and, therefore, just as prone to poor decision making as a result.

Another phenomenon that Sunstein analyses is *group polarisation*. When people in a group deliberate about a matter, they often arrive at a more extreme view than any of the individuals started out with. For example, if some people who dislike the prime minister get together, after discussion they will dislike the prime minister more intensely than before. This can be a dangerous process when juries, executives or politicians are making decisions about vulnerable people. Extremism in religion and politics is fostered by group polarisation.

Once again, dissent is valuable. Groups are less likely to succumb to damaging polarisation if dissenters are present.

Sunstein is sympathetic to whistleblowers, but gives little attention to them. Noting that "Better outcomes can be expected from any system that

creates incentives for individuals to reveal information to the group,” Sunstein suggests that a “company might inform employees that it welcomes internal whistleblowers and will not punish anyone who reveals information about wrongdoing on the premises or who makes suggestions about how things might be done better” (p. 71). This would be fine if companies actually practised what they preached. Many whistleblowers have learned that reality does not match the rhetoric.

Some whistleblowers are actually conformists, not dissenters. Conformist whistleblowers just do their job, which they believe means reporting problems when they see them. They conform to the officially stated policies of the organisation, or to ethical or professional norms, and this brings them into conflict with the actual power system, which is different. These sorts of whistleblowers are usually unprepared for reprisals, which hit them very hard. People who consciously dissent often have a better feel for what the response will be.

*Why Societies Need Dissent* concludes with this statement: “Well-functioning societies take steps to discourage conformity and to promote dissent. They do this partly to protect the rights of dissenters, but mostly to protect interests of their own” (p. 213). Those who have suffered reprisals for speaking out might conclude that we have a long way to go to become a “well-functioning society.”

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## Professional responsibility: whistleblowing

Kim Sawyer

*I was recently asked to give a lecture on whistleblowing to a group of third-year information systems students in the subject Legal and Ethical Frameworks at the University of Melbourne. This is an edited and extended version of that lecture. I acknowledge the assistance of Dr Martin Gibbs.*

The question often arises why you should be interested in ethics. I am

reminded of an old quote pertaining to morality which has applicability to ethics. “There is no good reason to be ethical.” However, perhaps that is changing, especially in the industries in which you will be working.

Consider first the rise of cyber fraud. On August 4 of this year, the *Asian Wall Street Journal* reported that in 2003 there were 166,000 complaints of internet-related fraud in the United States. Internet-related fraud is now growing in the US at an annual rate of 60%. Cyber fraud is big business, and it is a business that you will not be able to ignore. For many of you, your jobs in the future will depend on the integrity of information systems. Fraud debases those systems and reduces your job opportunities.

More generally, fraud, including cyber fraud, is an enormous global problem, arguably the most important economic problem we face. Fraud costs firms and governments approximately 6% of average revenues. But there is another dimension to fraud which is more relevant to you. Fraud is typically committed by the employees of firms. The 2002 global survey of fraud conducted by KPMG found only 27% of fraud as externally generated. And 51% of the fraud (by value) is committed by managers. What that means is that during your working lives, you will probably encounter a fraud, it will most likely be committed by an employee of your own firm, and it will possibly be by the manager you report to. You then have two problems. First, you may have to report the fraud. Secondly, you may to blow the whistle on your own supervisor.

Why should you blow the whistle on fraud? In simple terms, corporate malpractice costs jobs. The trading losses incurred by the National Australia Bank in 2003 and 2004, which were first uncovered by a whistleblower, have led to significant earnings downgrades for the NAB, and an 18% decline in the NAB share price since February. As the *Australian Financial Review* reported on August 6, those trading losses will cause job losses, particularly in information technology. The \$30 million fraud at the Victoria University of Technology, first identified by a whistleblower more than four years ago, but only prosecuted in August 2004, is expected

to lead to a loss of job opportunities at the university.

The 8th Global Survey of fraud by Ernst and Young found that whistleblowing is second behind internal controls as most likely to detect fraud. It is more likely to detect fraud than internal audit, external audit, accidental detection or management reviews. The Australian Compliance Institute concluded that “The idea of fraud being uncovered through the audit process is myth. Less than 2% of fraud is uncovered through this means.”

Whistleblowing has conferred substantial benefits on modern society. In the United States, changes in the regulations of most industries, including the tobacco industry, the nuclear industry, and the defence industry were attributable to the actions of whistleblowers. The investigation of the Space Shuttle disaster in 1986 primarily depended on a whistleblower, as has the investigation of 9/11. In Australia, royal commissions into the police forces of Queensland, NSW and WA have been instigated by the actions of whistleblowers. Whistleblowers are responsible for substantial changes in banking and insurance regulation, in transport regulation, in education and in competition policy. In both the US and Australia, whistleblowing has underwritten a new wave of corporate reform as represented in the Sarbanes-Oxley Act (US) and in Clerp 9 (Australia). In sum, whistleblowing is cleaning and reforming our modern system.

However, blowing the whistle on corporate malpractice is one of life's ultimate tests. An employee of a firm has a number of loyalties. In a whistleblowing problem, these loyalties conflict. The principal conflict is between the whistleblower's innate values of right and wrong and their loyalties to their workplace colleagues. The American Association of Professors (1943) expressed the loyalties conflict for a professor as

As a member of his community, the professor has the rights and obligations of any citizen. He measures the urgency of these obligations in the light of his responsibilities to his subject, to his students, to his profession, and to his institution.

There are similar expressions in most professional codes of ethics. The Australian Computer Society Code of Ethics states that the computer professional

1. Must place the interests of the community above those of personal or sectional interests.
2. Must protect and promote the health and safety of those affected by my work.
3. Must not knowingly engage in, or be associated with, dishonest and fraudulent practices. Must take appropriate action if I discover a member, or person who could potentially be a member, of the Society engaging in unethical behaviour.

Whistleblowing confers substantial benefits on society, but substantial costs on the whistleblower. A 1990 study of US whistleblowers cited in Grace and Cohen's *Business Ethics: Australian Problems and Cases* (1998) found that for 233 whistleblowers, 90% had lost their jobs or were demoted, 27% faced lawsuits, 26% had psychiatric/medical referrals, 25% alcohol abuse, 17% had lost their homes, 15% got divorced, 10% attempted suicide and 8% were bankrupted. In my own whistleblowing problem, of the 15 colleagues who supported me, twelve had left the university within two years of the problem, either through non-renewal of contract, dismissal or resignation. While the career of the whistleblower usually declines, the persons on whom the whistle has been blown often prosper. As noted by Jean Lennane, President of Whistleblowers Australia, the divergence between the careers of the whistleblower and the respondent is one of the best measures of corruption.

The paradox that whistleblowers, those who confer benefits on society, also pay the price, has compelled governments to act to protect them. This protection has come in a number of forms. In the US, this protection has taken the form of a 1968 amendment to the First Amendment (freedom of speech) to cover employees, the Whistleblower Protection Act of 1989 and 1994, and the Sarbanes-Oxley Act of 2002. In Australia, there are whistleblowing protection acts in most

states and territories, a limited federal act for federal employees, Clerp 9 Audit Reform and Corporate Disclosure Bill (2003), and most recently the Workplace Relations Act (2004), which includes some protective provisions for private sector whistleblowers. But Australia does not have the equivalent of the most powerful US whistleblowing legislation, the False Claims Act. Under the US False Claims Act, the whistleblower can initiate lawsuits on behalf of the government against fraudulent claimants on the government. This law permits fraud recovery with penalties of treble damages. The whistleblower is entitled to 15% of the cost that is recovered, and is entitled to protection. In a 1996 study of the False Claims Act for the Taxpayers Against Fraud Center in Washington, William Stringer found that the False Claims Act was a powerful mechanism for fraud recovery, and for fraud deterrence. Australia needs similar legislation.

And now for a reality check. Protection: What protection? There has been no prosecution for victimization of a whistleblower under any Australian legislation. The refrain of whistleblowers is uniform across all jurisdictions in Australia. Those to whom they take their complaints, ombudsmen, auditors, regulators, anti-corruption bodies, often don't investigate key complaints, don't interview whistleblowers, and don't publish their inquiries. This suggests that the commitment to whistleblower protection in Australia is cosmetic, not real. And this is the contention of whistleblowers. This contention is supported by the fact that none of the principal recommendations of the two Senate inquiries into whistleblowing in Australia has ever been enabled. And those inquiries were in 1994 and 1995. A further inquiry is long overdue.

Unsurprisingly, Australians are reluctant whistleblowers. A recent survey by Ernst and Young and the Australian Compliance Institute shows that increasing number of employees are afraid to report unscrupulous work behaviour for fear of reprisal. 80% are more likely to report unethical behaviour on the condition of anonymity, but 35% believed that the promise of anonymity would not be

kept. 60% of workers surveyed had no whistleblower program in their workplace, but felt the need for one.

Is Australia different? Australia appears to be different in three main respects. First, our legislation is fragmented across states and territories, the federal legislation is very limited, and we have no false claims act. The evidence points to nothing more than a cosmetic commitment from governments to protect whistleblowers. Secondly, it is the divergence of opinion between whistleblowers and non-whistleblowers that makes Australia different in terms of whistleblowing. Most Australians who are not whistleblowers believe that Australia is virtually corruption free. Most whistleblowers believe that Australia is corrupt, and significantly so. Thirdly, Australia is different because of mateship. In Australia, tightly controlled networks dominate. Mateship, not merit, is often the main determinant of acceptability. By blowing the whistle, the whistleblower ceases to be a mate.

As a future employee, you face the following dilemma. At some point in the future, your professional and public responsibilities may require you to blow the whistle. But, it may be at considerable cost and risk. And you may lose your mates. You will need courage without mateship. You will need some guidance. The best guide that I have found to whistleblowing survival is provided by *The Whistleblower's Survival Guide: Courage Without Martyrdom* by Tom Devine. From my experience, I add the following points.

1. Have low expectations. Whistleblowing is a survival test, and there are many hurdles. Learn to be disappointed and learn from your disappointments.

2. Never overstate your position and never use personal abuse. Whistleblowing is a battle for credibility.

3. Obtain an independent legal opinion to justify your position. Regrettably, those who judge whistleblowing complaints prefer independent legal opinion to a whistleblower's opinion.

4. Ensure your documents are precise, well sequenced and as legalistic as possible. Avoid excessive comment. Your documents reflect you.



You should also be aware that a number of whistleblowing support services are emerging. In Australia, apart from Whistleblowers Australia, there is *STOPline* which provides whistleblowing systems for companies in addition to investigations of whistleblower complaints. There is also an internet service *Yourcall.com.au*, which provides a facility for anonymous whistleblowing using the internet. These types of services are likely to be increasingly adopted by Australian companies. With fraud in Australia amounting to at least \$6 billion annually, Australian companies are looking for solutions.

I am often asked whether I would again blow the whistle given what I know now. My answer to that question is probably best provided by a quote from Mohandas Gandhi

There is higher court than the courts of justice and that is the court of conscience. It supersedes all other courts.

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*Note:* After this lecture I was approached by two students who are currently experiencing potential whistleblowing problems.

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## Wanted

### Poverty-loving writer to get around defamation restraints

**If you can write well and don't mind living on a low income, read on to find out how you can make a contribution to a more open society.**

Defamation law is supposedly designed to protect reputations, but it is often used to stifle free speech. Defamation cases are typically slow, expensive, involve highly technical discussions and have unpredictable results. Many people are inhibited from speaking out by the risk of being sued. Robert Pullan's book *Guilty Secrets: Free Speech and Defamation in Australia* (Sydney: Pascal Press, 1994) provides numerous examples.

In the United States, where free speech is constitutionally protected, there are hundreds of cases where companies and individuals use

defamation suits as a means of intimidation, even when there is little chance of winning in court. These are commonly called Strategic Lawsuits Against Public Participation or SLAPPs (George W. Pring and Penelope Canan, *SLAPPs: Getting Sued for Speaking Out*, Philadelphia: Temple University Press, 1996). In Australia, there are plenty of similar cases but you could even be threatened with a defamation suit for using the label SLAPP to describe someone's legal action!

Defamation law doesn't protect reputations that well, either. Just think of John Marsden, whose defamation suit against Channel 7 led to his reputation being damaged much further in the ongoing media coverage of the case. Or just think of all the everyday instances of defamation that the law does not address because people don't have the time, energy or money.

The internet now provides a better method for defending reputations. Responses to damaging allegations can be put in emails or on websites quickly, cheaply and without the need for legal or other experts. Admittedly, the net doesn't give equivalent coverage to the mass media, but it's a tremendous improvement over previous options.

There's one catch: the author and the publisher can still be sued. The publisher on the web is an internet service provider. If the ISP gets cold feet and asks for an allegedly defamatory document to be removed from a website, or cancels an email account, the solution is to find another ISP, especially one in a country where defamation laws are less draconian than Australia. That leaves the author as the major vulnerability.

If you're a freedom-loving writer who doesn't mind having few assets, you can help. You can write the things that people are afraid to say because of defamation law, publish them on a website (probably overseas) and let relevant people know about it through emails.

You can expose corruption and hazards to the public and reply to attacks on dissidents. Society greatly needs your contribution.

Yes, you could be sued, but since there's no money in it for the plaintiff,

this is less likely than if you have significant assets. In the *McLibel* case in the UK, two indigent anarchists defended against a McDonald's libel suit, resulting a public relations fiasco for the fast food giant. Corporations are now much more wary about how legal action can backfire.

If you pick your cases with some care, selecting those where the public interest is served by publication, you might well be able to attract pro bono legal support if you're sued. This prospect would be a further disincentive for potential plaintiffs.

In fact, there's quite a career awaiting you. Hundreds of dissidents and whistleblowers will greatly appreciate your help. Investigative journalists, who often see the juiciest parts of their stories cut on the advice of defamation lawyers, would welcome your services.

No doubt the opponents of free speech will try to discredit you and think of innovative ways to attack you. For greater protection, it would be wise to live outside Australia.

You, plus your friendly ISP, will serve in essence as a "defamation haven," which is analogous to a tax haven but serves a much more worthy purpose (see [http://firstmonday.org/issues/issue5\\_3/martin/index.html](http://firstmonday.org/issues/issue5_3/martin/index.html)).

For more information, contact Brian Martin, International Director, Whistleblowers Australia, PO Box U129, Wollongong NSW 2500, [bmartin@uow.edu.au](mailto:bmartin@uow.edu.au), [www.uow.edu.au/arts/sts/bmartin/](http://www.uow.edu.au/arts/sts/bmartin/).

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## Public Interest Disclosure Act 2003

### PUBLIC INTEREST DISCLOSURE LODGEMENT FORM

This is an official lodgement form for a disclosure made under the Public Interest Disclosure Act 2003. An informant should ensure that they fully understand the rights and responsibilities required under this legislation before the form is completed and signed. Appropriate advice should be gained before any disclosure is made.

#### 1. PERSONAL DETAILS

Family Name: \_\_\_\_\_

Given Name: \_\_\_\_\_ Gender (please circle): M / F \_\_\_\_\_

Title (please circle): Mr, Ms, Mrs, Miss \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Home Telephone No: \_\_\_\_\_ Work Telephone No: \_\_\_\_\_

Mobile: \_\_\_\_\_ Email address: \_\_\_\_\_

#### 2. DISCLOSURE DETAILS

Name of the Public Authority(ies) to which the Disclosure Relates: \_\_\_\_\_

Do you work for a public authority?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If Yes, which public authority and what is your position title?	

Does the disclosure relate to one or more individuals?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please provide names and positions held by person(s) in the public authority	

Public Interest Disclosure Act 2003

**PUBLIC INTEREST DISCLOSURE LODGEMENT FORM CONTINUED**

Please tick box(es) on the area relevant to your disclosure:

- Improper conduct
- An offence under State law, including corruption
- Administration matter(s) affecting you
- Irregular or unauthorised use of public resources
- Substantial unauthorised or irregular use of, or substantial mismanagement of public resources
- Conduct involving a substantial and specific risk of injury to public health, prejudice to public safety or harm to the environment

When did the alleged events occur? \_\_\_\_\_

Summary of disclosure: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Description of any documentation provided or names of witnesses: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Have you reported this information to any other person or agency?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please provide details	

Public Interest Disclosure Act 2003

PUBLIC INTEREST DISCLOSURE LODGEMENT FORM CONTINUED

**YOU SHOULD READ THE FOLLOWING  
INFORMATION AND SIGN AT THE END OF THIS FORM**

**3. ACKNOWLEDGMENT**

I acknowledge that I believe on reasonable grounds that the information contained in this disclosure is or may be true.

I have been informed and am aware that:

1. I will commit an offence if I know that the information contained in this disclosure is false or misleading in a material particular, or am reckless as to whether it is false or misleading in a material particular.

**Penalty: \$12,000 or imprisonment for one (1) year**

2. I will forfeit protection provided by the *Public Interest Disclosure Act 2003* if I fail, without reasonable excuse, to assist a person investigating the matter by supplying requested information.
3. I will forfeit the protection provided by the *Public Interest Disclosure Act 2003* if I subsequently disclose this information to any person other than a proper authority under the Act.
4. I will commit an offence if I subsequently make a disclosure of information that might identify or tend to identify anyone as a person in respect of whom this disclosure has been made under the *Public Interest Disclosure Act 2003*, except in accordance with section 16(3) of that Act.

**Penalty: \$24,000 or imprisonment for two (2) years**

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

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**For Office Use Only:**

Register Number: \_\_\_\_\_

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## Whistleblowers Australia contacts

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**ACT contact:** Peter Bennett, phone 02 6254 1850, fax 02 6254 3755, [whistleblowers@iprimus.com.au](mailto:whistleblowers@iprimus.com.au); Mary Lander, phone 0419 658 308; [mary.wba@ozemail.com.au](mailto:mary.wba@ozemail.com.au)

### New South Wales

**“Caring & Sharing” meetings** We listen to your story, provide feedback and possibly guidance for your next few steps. Held every Tuesday night 7:30 p.m., Presbyterian Church Hall, 7-A Campbell St., Balmain 2041.

**General meetings** are held in the Church Hall on the first Sunday in the month commencing at 1:30 pm. (Please confirm before attending.) The July general meeting is the AGM.

**Contact:** Cynthia Kardell, phone/fax 02 9484 6895; messages phone 02 9810 9468; [ckardell@iprimus.com.au](mailto: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

### Whistle

Editor: Brian Martin, [bmartin@uow.edu.au](mailto:bmartin@uow.edu.au), 02 4221 3763, 02 4228 7860

Associate editors: Don Eldridge, Isla MacGregor, Kim Sawyer.

Thanks for Cynthia Kardell and Patricia Young for proofreading this issue.

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## Public interest containment

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If you want to make a public interest disclosure in Western Australia under the new whistleblower law, there's a three-page form to fill out. It is reproduced in this issue on pages 17-19.

Take notice especially of the third page. You have to agree to assist anyone investigating the matter, to keep silent about the matter (except for communicating to “a proper authority under the Act”) and not to say anything that might identify anyone involved in the matter. If you fail in any of these regards, not only do you lose protection under the act but you could be fined or go to prison.

Personally, I think this law might be better titled the Public Interest Containment Act. It discourages the very thing that works best: informing others. I wouldn't be putting a lot of trust in the promised protection, either.

You are probably safer going public immediately. You might suffer harassment and dismissal but at least you aren't muzzled and don't risk going to prison.

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.**