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

The Whistle

NO. 43, AUGUST 2005

Newsletter of Whistleblowers Australia

PO Box U129, Wollongong NSW 2500

Jim Regan, Jean Lennane and Ted Regan at the Lee-Rogers inquest (see p. 7)

WBA conference agenda

Draft program

To assist in conference planning, please email Shelley Pezy asap (shelley.pezy@adelaide.edu.au) if you will be attending the conference.

Venue: Diamond Clubhouse SA Inc., 19 Kilkenny Road, Woodville Park, South Australia

For visitors to Adelaide, the best place to stay will probably be at the Lindy Lodge. Conference participants can have a room with a double bed for a reduced "special" rate of $70 a room/ night plus $10 per extra bed. Lindy Lodge is short walk from the Clubhouse venue.

Friday 9th September
8.00 pm - 10.30 pm
Meeting open to public
Presentations from SA Branch: "Abuse of Process in SA"

Saturday 10th September

9.00 am	**Registration**
9.30 am	**Annual General Meeting**
12.00 noon – 1.30 pm	**Lunch (at Halfway Hotel*)**
1.00 – 3.00 pm	**20 minute presentations by guest WBA members (up to 6 speakers)**
3.00 – 3.20 pm	**Break**
3.20 – 4.15 pm	**20 minute presentations by guest WBA members (up to 4 speakers)**
4.15 pm – 5.00 pm	**Open discussion**
6.00 pm	**Dinner (at Halfway Hotel*)**

*** Halfway Hotel, 666-668 Port Road, Beverley, (08) 8445 2725.**

Sunday 11th September, 2005
(MC Bob Moles – Introductions)

8.45 – 9.10 am	**Registration**
9.10 – 9.20 am	**Opening address (Jean Lennane)**
9.20 – 10.20 am	**Keynote speaker (Brett Dawson)**
10.20 – 10.40 am	**Break**
10.40 – 11.40 am	**Presentation by guest speaker**
11.40 – 12.00 noon	**Presentation by guest speaker**
12.00 – 1.30 pm	**Lunch (At Halfway Hotel*)**
1.30 – 2.00 pm	**Presentation by guest speaker**
2.00 – 2.30 pm	**Presentation by guest speaker**
2.30 – 3.00 pm	**Presentation by guest speaker**
3.00 – 3.15 pm	**Break**
3.15 – 3.45 pm	**Presentation by guest speaker**
3.45 – 4.15 pm	**Presentation by guest speaker**
4.15 – 5.00 pm	**Presentation by guest speaker**
5.00 – 5.30 pm	**Concluding remarks by Jean Lenanne and Bob Moles**

Letters

Letter from Tony Grosser

Thanks to Whistleblowers and lovely Catherine Crout-Habel, the Port Augusta Prison is looking after me very well. Your letters, faxes and phone calls have made me very safe. They have me on "protection from protection," basically in the management unit here at Port Augusta. The officers "spoil me rotten," giving me the meal server job that pays an extra $25 per week. I buy 1kg lots of Ski brand passionfruit yoghurt, sardines (John West), licorice and lots of stamps and the Adelaide *Advertiser*.

Since Whistleblowers stirred up the camp (head office of correctional services was inundated with phone calls; the manager here told me 1 June approximately), they now give me about three hours outside in the sunshine each day, instead of half an hour. I have my kettle, TV, clock radio, legal papers, etc. I have a large single room with a large window for a view, in Greenbush Unit 1. So thank you!

Without Whistleblowers' help, I would be doing it hard and would be in danger here. Wherever I go here, even to the doctor or to Property, I am surrounded by prison officers. My lady friend Ms Ania Jaworski has also been very supportive and on to Port Augusta management re my safety and conditions. So a big thank you to Dr Jean Lennane, Ms Catherine Crout-Habel, Ms Ania Jaworski and all the others who assisted your "still breathing" whistleblower.

Tony Grosser, PO Box 6, Pt Augusta SA 5700
14 June 2005

W F Toomer: a plea in the national interest

4 July 2005

The Hon Dr Sharman Stone MP
Member for Murray
Electoral Office
426 Wyndham Street
Shepparton Vic 3632

Dear Dr Stone

It is established beyond doubt that Commonwealth officers deliberately damaged Mr Toomer, and later his family, for the purpose of appeasing vested grain-shipping interests. One such officer, a State Director, perjured himself in the course of perpetuating a cover-up. Commonwealth lawyers subsequently misled the Federal Court when explaining your predecessor's reasons for refusing compensation.

Presumably, public service advisers refuse to recommend you to compensate this victim of Commonwealth criminality. In so doing they disregard your obligations to a constituent. They also disregard the Ombudsman's reasoned recommendation that it is economic in the long run to compensate where there is moral obligation, regardless of legal obligation.

A highly significant factor that is long evident in the non-resolution of Mr Toomer's case and others is the misguided perception of government lawyers that their first priority is to protect their client and employer.

Governments are increasingly aware of, and concerned by, the enormous harm to humans that springs from defective public service advice and government lies. Continuing disregard of this factor must eventually bring greater grief to all concerned.

Whistleblowers Australia Inc confirms that Mr Toomer's widely known case is the longest unresolved case on their records. The Commonwealth's dogged 32 year evasion of resolution precludes confident advice to prospective whistleblowers.

Just resolution of Mr Toomer's case would be a small but significant step in turning this situation around in Australia: it would be the first credible sign of good faith by authority toward those who expose wrongdoing.

Yours sincerely
Keith Potter

Letter from John Wright

The ways of bureaucracies are devious and obstructive. As a response to whistleblowing in a public hospital some years ago, I was suddenly promoted to a sham post, as I later learned. A pact had already been made, between management and those at risk of exposure, to neutralise my complaints. To that end, five "peers" were encouraged by management to give adverse opinions on my performance. None of them had relevant experience to comment. Two of them falsified their credentials.

The *Courier-Mail* story (*The Whistle,* June 2005, page 3) about Nurse Hoffman's alarming whistleblowing experience in Bundaberg Hospital reflects the systemic faults that are inherent in serious management problems such as she encountered. Although Dr Patel was "putting through huge amounts of surgery, putting in long hours" for the hospital, there is no media mention of the calibre and quantity of support he had from management or staff. The lawyer conducting an inquiry, for the government, has not promulgated that information but he has already suggested freely that Dr Patel is a murderer, referring to one case.

Regardless of his allegedly sinful past conduct, yet to be analysed fully and fairly by his peers, Dr Patel has been so effectively "murdered" by the media and by the inquiry that he will never get a fair trial, whatever the Premier's glib assurances. That comprises the grossest form of protection for the machinations of health management at every level. So it will go free and proliferate, a dangerous outcome for all concerned.

Articles

Finding a lawyer

Cynthia Kardell
Secretary, Whistleblowers Australia — and a lawyer

If you wanted a good mechanic or painter or doctor, you would probably look around and ask a few friends. You would probably consider their track record, whether they listened, treated you as a twit, explained what needed to be done in language you could understand with a view to you understanding (without being patronising) and whether they were prepared to give a free quote and encourage you to get a few other quotes, before deciding.

Well, it is not so different with lawyers and you need to be upfront about it.

Contact the Law Society and get (say) three names, of lawyers accredited in the area you need and go from there, if none of your friends can recommend a lawyer.

What you do need to keep in mind is that the law is a big body of information and it is not possible or economically sensible for a lawyer to practice in all areas of law. So ask whether they have had experience in the relevant area, and be prepared to chase a number of leads before you line up a couple of interviews (of the no charge / in person or on the phone, variety).

Be prepared to take a bit of time: it is generally not that urgent. But if there is some urgency, be sensible with it, as a good choice at the beginning will save a lot of heartache, disappointment and money, later.

Be comfortable with saying that you will think about it and get back to them, before you decide. Be prepared to swap [although there are a few traps here]. If you know you can be comfortable with doing all of this, you will feel less urgent and less unhealthily dependent on your lawyer.

Don't defer, because they are the lawyer and you are not. Do your homework. Look it up and follow your intuition and good sense.

If your instinct tells you something is not right, ask the question. Law is based on practical good sense and fairness (it is the practice of it that's often not). Then think about what you are told, find a friend or associate, who has a good head for thinking things through, talk it through and then, and only then, make a choice.

Giving instructions

Lawyers often talk about having "instructions" from their clients. All too often this actually means "information." It should mean what it says, that is, you have instructed your lawyer to do one thing or another. Obviously, if you are to be in a position to give instructions, you need to be able to work out what you want to be done, on your behalf.

In the medical scene, this exchange between doctor and patient is talked about as being put in a position to be able to give an "informed consent." That is, your doctor has taken the time to explain what can be done, how it could be done and what the likely outcomes might be, in terms of best practice and evidence based medicine. The law says that you have a right to be so informed and that your doctor has a legal obligation to adequately inform you as to the options and outcomes.

You and your lawyer are in no different a situation. Your lawyer has a legal duty and obligation to advise as to the law applying in your circumstances, the legal options open to you and the likely outcome in terms of the remedy sought, how that is accomplished in a practical and procedural sense and the potential cost of attempting to do it …. before getting your instructions.

For example, sending you a copy of the section of the Act applying in your circumstances, without the written discussion and opinion about what that might mean for you, is just not good enough. You need information (the legislation) and the advice (written or verbal) about its operation and effect upfront, so that you can develop a view, ask questions and make a choice.

Don't buy the "not enough time, we have to (etc.) … it's urgent" line. Tell your lawyer in reasonable tones, that he or she will have to let the other side know, you need more time, and in the meantime, the lawyer can provide the information and advice you need in order for you to come to a decision and provide instructions.

And don't buy the "the court ordered us to do this or that" line, without question. Courts, or registrars and judges, are bound by the rules that give them their jurisdiction (authority). Orders made by the court, except for the final decision on hearing the substantive matter or on a motion, are generally made by consent between the two sides or when one side concedes or gives ground. That is, your lawyer probably asked for whatever it was that was done.

Orders made by a registrar, at a mention and directions hearings are orders made by consent because generally the registrar does not have the power (authority) to decide between the competing demands of your lawyer and the lawyer on the other side. If there is no agreement between the parties after a bit of nudging by the registrar, it usually has to be brought before a judge. So ask how the system works, look up the Court Rules on the net, and let your lawyer know by your actions, you are going to think about what you are told and you intend to give "instructions" not just information.

This is the first of a series on "How to be a client." Stay tuned.

Managing internal witnesses in the Australian public sector

Peter Bowden
Education Officer of Whistleblowers Australia

This conference on whistleblowing, held at the Australian National University in Canberra in July, raised many important issues. The first impression at 8.30am that it was predominantly a conference of businessmen in blue-

grey suits turned out to be false, for Peter Bennett and Jean Lennane of Whistleblowers Australia later turned up. Nevertheless, most of the attendees were public servants interested in setting up internal whistleblowing units in government departments.

The conference was run by the ethics centres at ANU and Griffith University, who in conjunction with several other universities and ombudsmen's offices have won a half million dollar government grant to research the problems of whistleblowing and to come up with answers.

I mention here many of the more important highlights that arose:

- The definition of a whistleblower. The conference defined a whistleblower as being from within the organisation. This definition was challenged on a couple of fronts:

a) External people, for example, contractors who uncovered wrongdoing, can be discriminated against if they reveal this wrongdoing. They should have the support of the whistleblower protection acts.
b) An increasing percentage of government work is being outsourced. It is illogical if the legislation works only if the government does the work, but not if it is done by the private sector.

- John McMillan, Commonwealth Ombudsman, made a number of interesting points on whistleblower legislation.

a) There are, he said, "more differences among the state laws in this area (whistleblower protection) than any other set of laws in Australia" (such as FOI, Ombudsman Acts, Human Rights legislation, EEO).
b) The reason is the different emphasis by each state on specific aspects of the whistleblower acts.
c) The legislative acts are incomplete. They need to decide: what is to be covered; what type of protection; the criteria for protection; the annual reporting and review of schemes; and what they should require for internal systems.

- Peter Bennett questioned John McMillan on whether it would be better for a special unit in the Ombudsman's office to handle whistleblower problems. McMillan agreed. Such an office, he said, would be more tuned into the problems of whistleblowers and the difficulties of investigating their cases. A later question on ICAC and the Ombudsman in NSW revealed that McMillan, who is a Professor of Law, thought that ICAC had too many lawyers who looked for the hard legal evidence necessary to prosecute. If they can't get it, they give up on the case.

- Jean Lenanne's question about Gary Lee-Rogers, unfortunately, got cut off on the grounds that the conference should not raise individual cases.

- The talk by Lynnelle Briggs, Australian Public Service Commissioner, on whistleblower protection was particularly disappointing. It appears that it will be many years before good protection for Commonwealth public servants is available. Section 16 of the Public Service Act offers no protection, no obligation to investigate a whistleblower's complaints and no sanctions against reprisals or retribution. Several people at the conference condemned it. Quote of the conference came from the Commissioner: "Whistleblower protection should not be a front for disgruntled public servants".

- Peter Bennett of Whistleblowers Australia gave a great talk. He slammed, in particular, the Public Interest Disclosure Acts in the various states, but most of all the whistleblower protection of the Public Service Act. The major failing, he claimed, is that for the whistleblower there is nowhere to go and no-one who has the responsibility to help the whistleblower.

- Frank Costigan, now Chairperson of Transparency International, criticised the increasing efforts by governments of both persuasions to control information. He quoted Peter Bennett's case along with many others. It was an informed and passionate talk.

- John Taylor, Deputy Ombudsman, Victoria, made several key points:

a) "It is appalling that there is no Commonwealth whistleblower protection."
b) Any person should be able to complain.
c) There will be a review of the Victorian legislation in 2006.
d) Victoria can prosecute for discrimination, but has not used this legislation. The Ombudsman's Office has however counselled a number of chief executives against retribution.
e) Victoria is increasingly concerned with ensuring that the Ombudsman's Office investigates the problem rather than allowing the agency to investigate itself.

- The wrap-up by Dr AJ Brown of Griffith University highlighted three macro issues.

a) Legal frameworks. Not just each whistleblower act, but a range of acts, need to be integrated before full legal protection is available.
b) The pivotal role of independent "integrity" agencies and what this role should be needs to be decided. "Integrity agencies" is his word for ombudsmen, ICAC, etc., as is "internal witnesses" for whistleblowers.
c) Internal schemes within an agency of government are necessary. There are several requirements for these internal agency systems. (1) Clear reporting systems that have alternate channels are needed. (2) A whistleblower needs a system that can go outside his/her agency. (3) An internal system needs to have good investigative capabilities. (4) Confidentiality systems are necessary.

Security surveillance

John Pezy
President of the South Australian
Branch of Whistleblowers Australia

Whistleblowers often have concerns about the security of their homes or places of work. The traditional methods of security surveillance that involve having security people monitoring security cameras on video monitors or recording the video information on videotape are not practical solutions for whistleblowers. Employing people to watch video monitors for you is obviously going to be far too expensive. While it is economically possible to set up cameras and record their output on tape most people could never find the time to spend hours watching the tapes to see if anyone has been nosing around. Further if somebody does enter your premises they may well discover your security video system, steal the tape and although you would know that you had been broken into you would be no more the wiser as to who they were and what they were up to. However, modern computer technology has come to the rescue and very practical systems can be set up using a desktop or laptop computer, and these are pretty abundant these days.

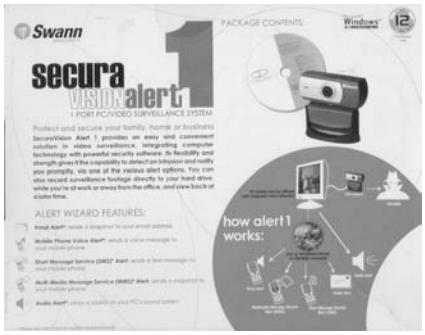
There are a number of systems on the market and they work, broadly speaking, in the same way. These systems require a reasonably modern computer and while the minimum requirements are not exactly the same for each system it usually amounts to having a computer running at a speed of 400 Mhz or faster, at least 64 MB or 128 MB of RAM, a SVGA display with at least 8MB of video RAM and a video input or USB port. The computer must have a modem and the ability to send e-mails. An ordinary video camera can be used if the computer has a video input, but these are usually only found on computers with a PCI video capture or TV tuner card and these are not standard items on computers. However a USB camera such as a web cam will work with the USB port and both systems that I have looked at came equipped with a suitable USB camera. Any computer purchased new after the introduction of Windows 98 should have a USB port and will most probably do and any computer bought new in 2000 or after should almost certainly do.

The virtue of these computer based video security systems is that while they are constantly monitoring they do not record anything until there is something worth recording. This is achieved by having the video image produced by the camera analysed by software that can detect motion. The software does this by dividing the image it is receiving into a grid that consists of a matrix of elements of the whole field of view. The software then compares the contents of each of these elements from frame to frame. If there is some significant movement in the field of view the software detects this by noting that the contents of some of the elements is changing from frame to frame. Once this happens motion has been detected and the computer is instructed to freeze the image and save it to the hard drive so that it can later be examined. This is obviously much better than continuous recording, because it obviates the need for watching hours of video to see if anybody is nosing around. The computer can also be programmed to generate a loud audio alert to warn the occupier and/or scare away the intruder. However if the premises are unattended and the intruder realizes this, the evidence could be stolen by stealing the computer, as is the case with the videotape. However these are intelligent systems and while they might not be able to prevent the theft of the computer by an intruder, not scared off by the alarm, they can certainly prevent the theft of the image or images that the computer has made of the intruder.

The theft of the image of the intruder can be prevented because what these systems have in common is that the computer can be set up to e-mail the image to a designated e-mail address as soon as it has been taken and saved. This is not instantaneous and so some thought has to be given to locating the computer so that the intruder is not able to interfere with it as soon as the image is captured. However a few minutes would be enough time to send off the e-mail and it should be possible to locate the computer so that it takes at least as long as this for the intruder to get at it. There are a number of measures that could be taken to make it certain that the captured image or images are sent off before the computer can be interfered with by the intruder. The computer could be locked in a cupboard, provided that the ventilation is adequate. While the cupboard may be broken into this should take long enough for the e-mail to be sent. A variety of alternatives to this could be employed and these are dependant on the physical situation and the imagination of the user.

The location of the camera and the speaker which sounds the audio alarm needs some careful thought. The camera should be concealed to as high a degree as possible while more obvious dummy cameras could act as decoys. The wiring to the real camera and the speaker should be concealed so that it is made as difficult as possible to trace it back to the computer and so give away the computer's function as a security system and/or its location. It would be more difficult to conceal the speaker, as the sound of the alarm is always likely to give away its location. However in this case some dummy wiring could lead to a dummy security system which is fake, but made to look real though nothing more functional than being the electronic amplifier that

drives the speaker. The intruder might then be fooled into spending time disabling the speaker and dummy security system while the real security system is busily e-mailing images of this being done to a completely secure location.



Another consideration would be the need for maintaining continuous power to the computer. A black-out would shut the system down and it would not come back on line without somebody turning the computer on and running the software when the power returns. A UPS or uninterruptible power supply would solve this problem but this might cost more than the user is willing to pay. Alternatively a home made UPS could be made using a battery charger a 12 volt lead acid battery and a 12 volt DC to 240 volt AC inverter. The battery could be a conventional car battery, but a deep cycle battery would last longer. However blackouts may be infrequent enough for the user to run the risk of one knocking the system out of action occasionally. If a UPS is used the screen or monitor should be turned off once the system has been set up and is running since a substantial proportion of the power consumed by a computer goes to the visual display and this would considerably shorten the period for which a UPS could keep the system running during a black-out. Further an intruder may find the computer but never realize what the computer is doing if the visual display is off, and this consideration applies even if there is no UPS. Under some circumstances it might be desirable to unplug, disable or even remove the monitor to another part of the premises once the system is operational. A computer without its monitor could also be more easily locked away in a cupboard.

However none of the above measures of securing the computer security system are essential, and a whistleblower should not be put off by the idea that they are. A computer sitting on a desk with the monitor turned off is highly likely to be able to e-mail images of an intruder before the intruder can do anything about it and it is quite possible that the intruder might never realize that it is functioning as a security system.

It is now more than two years ago that I looked at the two computer based security systems and it is likely that others have entered this market. It is also possible that the two I looked at have been superseded. However they could be the starting point for any whistleblower wanting to look into acquiring such a system.

The first system was the Hercules DUALPIX and besides functioning as a security system it had a number of other uses. The camera could be used as a USB webcam and a stand-alone digital camera with an 800,000-pixel resolution. The software provided enables its use, as a Video Recorder, also for the sending of Video Mail, and as a Video Security System with e-mail and audio alarm capabilities. The software also enables the downloading onto the computer of digital images when the camera is used as a digital camera, as well as an Earthcam TV Broadcaster to broadcast live video over the internet using www.earthcam.com and Microsoft Netmeeting Software for making videophone calls and videoconferencing applications. The cost of camera and software was about $200.

The second system was the Swann security secura visionalert 1. This system was more specifically a security system. The camera provided was a Swann USB webcam. The software was Swordfish software from Surelabs. This system did not have the broad range of non-security applications of the first, but besides the e-mail and audio alarm capabilities the computer can also be set up to send a voicemail, sms or image to a mobile phone. The cost was less than $100, but it is more tedious and involved to set up than the first. Surelabs has a Help Desk Service, but because of the low price this help is not free. Anybody buying this system would be well advised to buy it from a retailer who can provide some support if possible. The same advice may well apply to systems that have come onto the market in the last two years. However once up and running this kind of system could give a whistleblower in fear of having their premises entered while they are away more peace of mind than would otherwise be the case.

John Pezy may be contacted on phone 08 8337 8912 or archerpezy@aol.com

Is this the last word on who or what killed Gary Lee-Rogers?

Jean Lennane
President, Whistleblowers Australia

I very much doubt it. Within days of the completion of Gary's inquest on 20 and 21 April this year, where Senior Deputy State Coroner Jacqueline Milledge had severely criticised Gary as not being a genuine whistleblower, and Whistleblowers Australia (WBA) for informing Schapelle Corby's legal team about the case, the issue of drug-running and other serious security failings at Sydney Airport blew wide open. Who would now believe there was no substance to Gary's original complaints? And nothing serious enough to put his life at risk?

What I had informed the Corby legal team about was the anonymous phone call Gary received before his death, telling him that he *"had tripped over evidence of drug importation through Sydney Airport, involving the old Commonwealth Police network. The caller named x and y*" [both fairly senior members of the then Australian Protective Service (APS)]. I had also told them I thought it likely that such issues, and the potential for embarrassment to the re-merged APS/AFP (Australian Federal Police), could help to explain AFP head Mick Keelty's apparent hostility and unhelpfulness to the Corby team and case.

Now ex-AFP officers and others are coming out with what they know on the airport drug issues. (Could one of them have been Gary's anonymous

phone-caller, whose very existence was pooh-poohed by the court?) I am hopeful it's only a matter of time before we start hearing from people who know what really happened to Gary — something the inquest, as is not unusual in our failing system, didn't manage to find out.

From the first week of the inquest I have been convinced, by the attitudes and behaviour of many of those involved, that what happened is known to some. This doesn't prove he was deliberately murdered — he was so ill it wouldn't have taken much to kill him — but in the words of forensic pathologist Dr Duflou, "Something has happened before death, in my view, in that apartment."

Brief history of the case (for more details refer to reports in the Whistle, January and July 2004)

In September 1999, APS officer Gary Lee-Rogers made a report on security failings at Sydney Airport. He also reported problems with missing equipment, and other alleged misconduct in the APS. Within a few weeks his career was over; he had been (illegally, as it turns out) suspended without pay, and charged with a number of criminal offences — charges which over the next two years had to be progressively reduced owing to lack of evidence. The only one remaining for his trial which was to have been on 4 November 2002 was that of allegedly forging his supervisor's signature on overtime sheets to obtain moneys he was not entitled to. A witness who supported Gary's claim that his supervisor had given him an electronic signature to use would have made that charge also difficult to sustain; and there would have been grave fears within the APS that if Gary continued to insist on pleading not guilty, and mounted an aggressive defence, his original complaints would become public, with enormous embarrassment for the APS, which was in the process of re-merging with the AFP, presumably to negate any such exposure by being able to claim the restructure would have fixed any problems.

After two and a half years of typical whistleblower torment and persecution, Gary's physical and mental health had broken down, and he spent several weeks of the last few months of his life in hospital, mostly because of Mark Latham's complaint — recurrent pancreatitis. His final discharge from Queanbeyan Hospital was on 21 September 2002. He was last known to be seen alive on 26 September, also the last day he made or answered any phone-calls. His body was found on 1 October, having been dead 2-4 days.

The Coroner's finding

The inquest finished on 21 April 2005 with the finding by Coroner Milledge that "*Gary Lee-Rogers died between 26 October* [sic] *2002 and 30 October* [sic] *2002 at unit 1/5 Charles St, Queanbeyan, NSW. The cause of death is natural of an unknown aetiology*."

In my opinion, this is a truly extraordinary finding. While there were indeed a number of possible causes of natural death (albeit from illness exacerbated by the stress of his two and a half years of persecution as a whistleblower), homicide was certainly not excluded, given the many strange and unexplained happenings, appearances of the death scene, and the hopelessly inadequate police investigation. And how can you make a definite finding of *any* cause when the cause of death isn't known?

Even the date of his death isn't known. He was last seen alive on 26 September, (unless he was murdered later) and didn't make or answer any phone calls after that — unusual for him if he'd been conscious and functioning. However there were at least three possible known causes of prolonged coma, as well as other possibilities that the perfunctory autopsy could easily have missed.

An item of evidence referred to by the Coroner in her introduction, but not mentioned or accounted for in the decision, was that "*I was also troubled to read the statement of Emma Kate Richardson where she refers to a verbal altercation at the flats that may have involved Mr Lee-Rogers on 28 September 2002*". Ms Richardson attempted to give this statement to police in their initial door-knock when Gary's body was found on 1 October, but it was ignored by the officers who called at her flat and only came to light when a different officer visited some days later. Even then there was no attempt to see if she could pick Gary from a photo line-up, or his alleged assailant, AFP agent Anthony Maguire. The "*also*" in the Coroner's statement refers to *"Among the many deficiencies in the police brief I was particularly concerned with the inadequacy of the investigation into the Federal Police Officer's movements on the night he allegedly assaulted the deceased*." Coroner Milledge was formerly a NSW police officer, so presumably has some expertise in police investigation. However the quoted statements, which would seem to conflict with her decision, are typical of many such throughout the preamble.

She seemed often to want to have a bob each way, praising Gary and Whistleblowers Australia, for example, as great people one minute, and vilifying them as manipulative bullies the next. No such each-way bets with her legal team, though — *"Mr Shevlin and Mr Saidi I would trust my life to those men, absolutely*." Which doesn't do much for the idea of decisions based on objective assessment and analysis of the evidence.

APS/AFP problems

The inquest, through the Coroner, gave WBA unprecedented access to internal APS files in this case. A couple of highly relevant files had mysteriously gone missing, and the first 8-9 pages were missing from several others as shown by the remaining pages having been renumbered. (Counsel representing the AFP explained this by saying it is not unusual for the AFP to have missing pages and renumbered files!) However there was a lot of most valuable, and potentially highly embarrassing, information still there. The files were contained in two large satchels, the volume of which would have prevented most people from ploughing through them all. However they had failed to allow for the presence of ex-fraud squad whistleblower detective Debbie Locke, who was prepared to spend many hours studying them in detail, and even transcribing crucial items in longhand, as she was — rather strangely — not permitted to photocopy them.

Some very revealing memos and emails detailed Gary's persecution by the APS. Crucially, an audit had been

conducted because of complaints "by a disgruntled employee" — unnamed, but presumably Gary. The audit showed over $300,000 worth of equipment missing, including over 50 firearms, which have never been found. (Is arms-smuggling going on through our airports too?). It also showed that a recently-ex-APS senior officer had been paid over $300,000 to recruit 20 APS officers for Sydney Airport. The contract had not been advertised or put out to tender in any way; and as the audit stated, the cost was some ten times what would have been expected. There was no evidence of any action having been taken to correct this or recover the money, let alone to discover whether those awarding the contract had shared in the largesse.

It is hardly surprising that no-one on the bar-table seemed interested in getting this information out into the open, so it was left to whistleblower Debbie Locke to do it in her evidence. This was not a popular move; and possibly contributed to the Coroner's decision to put a permanent suppression order on WBA's submission that covered some of it.

Who were the bullies?

According to the Coroner, it was WBA, whose *"inclusion made this inquest almost unbearable in many respects*" in part because "*both Lennane and Locke treated those decent, hardworking and committed men* [her legal team, Shevlin and Saidi — S/S] *like the enemy. They continually questioned their impartiality in dealing with issues at Inquest. They used all the tactics they accuse others of employing when wishing to demean and discredit a whistleblower*."

Indeed, as the only volunteer parties at the bar-table of eight taxpayer-funded lawyers, Debbie and I seem to have had a remarkable impact. Because we were abusive and unpleasant to them and the Coroner? Everything we said in her presence is on transcript; and after the first week Shevlin and Saidi refused to speak to us off the record, even to answer the simplest housekeeping questions, apart from a couple of occasions when they pounced on us, loudly verbal, for some alleged misdeed. And the friendly, bantering end-of-day chat outside the courtroom on 22 April last year that we had thought could mend some bridges turned into a serious accusation of "Whistleblowers allegedly recording conversations" as police report I 21233465 states. Why S/S should have got so excited and alarmed about the possible recording of what they were saying, e.g. that Saidi wanted to be played by Sean Connery in the movie of Debbie Locke's proposed book about the case, with Sharon Stone as the Coroner, isn't clear. Could they have been worried about throwaway remarks about Gary being a "liar" and "wanker" coming from the supposedly neutral Crown Solicitor's office? Or Saidi mentioning to Debbie Locke that he could be the one signing her husband's cheque (in his compo case against the NSW Police)? Unfortunately, we weren't in fact recording it. This didn't stop the Coroner stating that, among our other crimes, "*They secretly taped meetings between Whistleblowers and my legal team*."

The follow-up to that incident was also mentioned critically by the Coroner, where "*…it is alleged Saidi and Shevlin were hiding behind a tree making notes about Ms Locke and Dr Lennane. I visited the courtyard and could not find a tree let alone one capable of hiding two substantial figures*." There was no attempt to check the whereabouts of the tree with us before making that statement. When we went afterwards to check for ourselves, where we remembered seeing them emerge from behind the 'tree' (actually a 2.5m high, dense, wide shrub) as we were doing our usual end-of-day filming session with independent filmmaker Steve Ramsey a year before, we found the 'tree' had gone (!) and only a recently-cut stump remained. No doubt Mr Saidi had forgotten its existence, or surely he would not have allowed the Coroner to be misled by its absence into thinking it was never there. No doubt it was also pure coincidence that the 'tree' had been cut down before the hearing occurred, but no wonder whistleblowers get 'paranoid'. (Photos of the 'tree', with S/S emerging from behind it, and the stump, are available on Debbie Locke's website, www.whistleblowing.com.au)

The outrageous *Whistle*

But it seems it's not only whistleblowers who get paranoid. The subject that took up a large part of the 28 pages of transcript from a special extra hearing called at short notice on 31 August last year, was my previous reports on the case in *The Whistle.* And whereas on S/S the Coroner says *"I've got nothing but good things to say about them as far as their ethical position is with regards to any inquest and dealing with any members of the public or any group. I've never had any complaints before. And, as I say, I trust them with my life. But if Dr Lennane wants to continue to write letters and chip away at things and publish things that [sic] untrue well she can brace herself because I've had enough of it. You know, in the old days you'd say you'd read the riot act to somebody, we'll let Whistleblowers know that the riot act is being read to them because I will not tolerate it again."* And there are many, many more pages in similar vein or worse. *"And I can tell you this, Miss Locke, and you can tell Dr Lennane this, she is on the edge of me considering whether I should be taking some action against her. I am tired of all the smears. I am tired of the intimidation. I am tired of all the obstacles she is putting in our way to try and do a good job."*

"You know, Dr Lennane is the first one to throw brickbats at people and complain about people, but her conduct is shabby, absolutely shabby. And if she is the public face of Whistleblowers well you want to rethink your position because she is doing Whistleblowers no good service."

Serendipitously I was out of town and unable to get to the hearing, much apparently to some people's disappointment. However it was clear that an undertaking had to be given on behalf of WBA not to publish any more outrageous reports in *The Whistle,* or the Coroner would remove our privileged status of being allowed to examine witnesses — the reason there was no report after the hearing last October. This was also because, as seemed to be the Coroner's pattern, she "read the riot act" to us at regular intervals, (was this just to keep the boys happy?) then did what they didn't want; in this case made us formally a

party to the proceedings. Unfortunately that pattern seemed to have stopped when she made her final decision.

One could interpret her behaviour as indeed being that of a victim of bullying. But by WBA, who had no direct access to her, or by her legal team, who did? And who deeply resented WBA's presence and our insistence on including evidence they didn't want to hear? *"I was committed to embrace Whistleblowers Australia at Inquest and allow them the opportunity to inspect documents and examine witnesses. Counsel assisting and his instructing solicitor advised me against it…"*

So what were the heinously outrageous statements in those *Whistle* reports which had this extraordinary effect? *"The first newsletter that I read, I think I told you this, I got so angry I was shaking. And I don't get angry very much. I've got to tell you. I don't get angry very often at all. But I was livid, absolutely. Just to think that the hard work that's gone into this inquest and to be treated like that is just appalling, absolutely appalling."* Unfortunately space prevents reprinting the reports in full. However one such item was the opening sentence of my report on the second week. "The inquest resumed on Monday 19th April 2004, and closed at lunchtime on Friday 23rd." This to me was simply a statement of fact, but got the remarkable, repeated response: *"But it's just the attitude, it's the approach. And it's the publications, the constant publications with the criticism. I must say that was terribly hurtful what she said 'Oh, and it was all finished at lunchtime on Friday.' No recognition that we're working hard. You know, just slurs all the time. I believe that things should be published but I've got to tell you I am thinking at this moment of putting a non-publication order on any of the evidence that's in this." "But stupid things like, you know, 'finishes at lunchtime on Friday' as though we're doing nothing. You know, oh here they go, they've swanned down to Queanbeyan, they've done a week, they've done almost a week's work but they've had to leave early on the Friday."*

The last sentence of the first report also caused some offence. "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." It seems it was this that she interpreted as meaning she was simply a puppet in their hands, rather than what it really meant, that decisions, like computers, are only as good as the information supplied.

With my psychiatrist's paranoia, I have to wonder whether such extreme — and on the fact of it unwarranted — reactions mean I must have hit a nerve I didn't know was there. Judge for yourselves.

Another item in *The Whistle* reports that caused offence, not only to the Coroner, but also the NSW Police legal team, was about detective John Moore's promotion. It reads: "Police investigation. 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. … 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."

They took offence at what they took to be an implication that Moore's promotion was "corrupt"; and were at pains to show that it was already in train long before our objection.

Not wanting to make things worse at the time, when we were under so much attack already, I refrained from explaining what I had really thought most whistleblowers' interpretation might be — that an officer who had saved his own and a fellow service potential embarrassment by failing to find anything in his investigation, was being suitably rewarded. Certainly, despite NSW Police DI Bailey's and the Coroner's extensive (and well-justified) criticism of his investigation, Moore's career seems to have prospered — at the time the inquest finished he was an Acting Inspector. Presumably he's learned from Gary's case not to put crucial items of evidence in the lost property section (Gary's mobile phone, with its evidence of threats made to him, and by whom) and — one hopes — not to leave them, without examining them, for 4-5 months until they are destroyed. And for all we know he has other talents that amply justify his continued promotion.

I accept that Moore's promotion to sergeant was already under way before we raised our objection, i.e. it was not done "corruptly." However any whistleblower would wonder what chance Moore would have had of the promotion proceeding if he'd found evidence incriminating police and had insisted on proceeding with it.

What they didn't want

1. There would not have been an inquest into Gary's death without WBA's and media intervention. Local Coroner Lenarduzzi indicated he did not intend to hold one, although Gary had been telling WBA and others for a year before his death that his life was being threatened, and had said that if he were found dead it would not be suicide. The autopsy, done in Canberra by a visiting pathologist from Melbourne, in our opinion nowhere near thoroughly enough for such a case, and which according to normal guidelines for a suspicious death should have been done at the expert forensic centre in Glebe, failed to find the cause of death.

2. Without WBA's intervention, witnesses called for the inquest would not have included anyone with a favourable opinion of Gary. "Character assassins" called to give evidence included men who'd been rivals for some woman's affections ten or more years before. His mother however would not have been called. She is in her eighties, and too physically frail to make the journey from Melbourne to Queanbeyan, but was repeatedly misrepresented at the bar table as not wanting to give evidence. Then when she made her wish to give evidence clear by writing directly to the coroner, there were claims that she was mentally impaired following a stroke. An important item of her evidence, given by phone link-up in the last week of the inquest, unshaken in cross-examination, but not mentioned by counsel assisting the coroner in his final submission, or the Coroner's decision, was that she had spoken to a

male officer at Queanbeyan police station who identified himself as "John Moore" in June 2002, three months before Gary's death, who said there was indeed a contract on Gary's life, and they knew who it was, "someone in Sydney." John Moore, the officer in charge of the NSW police investigation into Gary's death, denied any prior knowledge of Gary, although Gary had been reporting to Queanbeyan police station twice a week for two years as a condition of his bail.

3. This piece can only scratch the surface of the nearly 2 cubic metres of documents produced so far in this case. Our 39-page submission to the inquest has a lot more detail, but at the insistence of various other members of the bar-table, has been suppressed, together with the two submissions written by them in reply, because *"Their unsubstantiated allegations, their wild accusations that they have presented to me in the submission are not in anyone's interest."* This criticism could hardly be sustained if anyone with an open mind were allowed to read it; but as the suppression order stands, they can't. Quite a neat trick when you think about it, accusing us of writing something so bad that no-one can be allowed to read it to see if the accusation is true.

So for more details you'll have to wait for Debbie's book — *Gary Lee-Rogers is dead* — and the film.

Note: All quotations in italics are taken directly from the court transcripts. Precise references available on request.

Jean Lennane, filmmaker Stephen Ramsey and camera operator Brendan

Whistleblowers Australia contacts

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

New South Wales
"Caring & Sharing" meetings We listen to your story, provide feedback and possibly guidance for your next few steps. Held every Tuesday night at 7.30pm, Presbyterian Church Hall, 7-A Campbell St., Balmain 2041.
General meetings are held in the Church Hall on the first Sunday in the month commencing at 1.30pm. (Please confirm before attending.) The July general meeting is the AGM.
Contact: Cynthia Kardell, phone 02 9484 6895; messages 02 9810 9468; fax 02 -9418 4431 ckardell@iprimus.com.au
Website: http://www.whistleblowers.org.au/
Goulburn region: Rob Cumming, phone 0428 483 155.
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Website: http://www.uow.edu.au/arts/sts/bmartin/dissent/

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

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

Victoria
Meetings are normally held the first Sunday of each month at 2.00pm, 10 Gardenia Street, Frankston North.
Contacts: Stan van de Wiel, phone 0414 354 448; Mervyn Vogt, phone 03 9786 5308, fax 03 9776 8754.

Whistle
Editor: Brian Martin, bmartin@uow.edu.au, phones 02 4221 3763, 02 4228 7860. Associate editors: Don Eldridge, Isla MacGregor, Kim Sawyer. Thanks to Cynthia Kardell and Patricia Young for proofreading.

WBA Annual General Meeting

Time: 9.30am Saturday 10 September 2005

Location: The Diamond Clubhouse SA, Inc., 19 Kilkenny Road, Woodville Park, South Australia

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 3 September. 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 to the secretary (Cynthia Kardell) at least 24 hours before the meeting. Proxy forms can be obtained from http://www.whistleblowers.org.au/. No member may hold more than 5 proxies.

For information about the conference associated with WBA's AGM, see page 2.

To assist in conference planning, please email Shelley Pezy asap (shelley.pezy@adelaide.edu.au) if you will be attending the conference.

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.