

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

The Whistle



NO. 44, NOVEMBER 2005

Newsletter of Whistleblowers Australia

PO Box U129, Wollongong NSW 2500

Apology to Peter Walsh

An apology to Peter Walsh, retired Senior Assistant Commissioner of the New South Wales Police, was planned for this space. However, at the time of going to press, agreement had not been reached about the wording. See page 11 for details. Assuming agreement is reached, an apology will be published in a future issue of *The Whistle*.

**Brian Martin
Editor**

Media watch

Let public servants speak

Tony Harris
Australian Financial Review,
5 July 2005, p. 62

Whistleblowers deserve a mechanism within which to work, writes Tony Harris.

The French have a saying, "esprit d'escalier", the wit of the staircase: the moment when you belatedly think of the perfect retort, the response you could have made had you thought of it before retiring for the night.

The expression fits a speech made last week by Andrew Podger, the former public service commissioner, on his retirement from commonwealth service.

In a carefully worded attack, Podger spoke of public servants giving more weight to the political needs of their ministers than to the public interest.

He also said they avoided accountability by making few file notes, and by destroying documents.

These criticisms are important, as Podger was a senior and respected bureaucrat.

But they are late: the speech would have been better delivered eight months earlier, when Podger was the head of the Australian Public Service Commission, the office charged with such matters.

About the most the commission said on this issue before last week was that many public servants dealing with ministers' offices "face a challenge in balancing the relevant [Australian public service] values". Had Podger been more forthright earlier about the faults he disclosed last week, the public would have taken more notice.

Commonwealth law requires its public service to be apolitical. But officers at least those who value their careers know the real requirement is that they enthusiastically support the government.

The head of the Department of Prime Minister and Cabinet, Peter Shergold, seems to understand this. When he was the public service commissioner, he aligned himself with the government by publicly endorsing

legislation proposed by the Prime Minister but opposed by the opposition.

Shergold also seems to misunderstand the legal requirement for the public service to be apolitical. He speaks about the concept, but refers only to the need for public servants to be non-partisan. This is not the same as avoiding political action. His ambiguity allows the suggestion that officers may overtly advance the political goals of the government of the day, as long as they are willing to help coalition and Labor governments equally.

An important way to help the government is to hide embarrassing truths. We saw this in the "children overboard" affair. The then chief of the Defence Force, Chris Barrie, said it was not his job to tell the then minister for defence, Peter Reith, that Reith had misinterpreted Defence Force photographs.

Although the government's lies about children overboard were uncovered by Senate hearings, the public too often has to rely on whistleblowers to reveal government failings.

Jayant Patel might still be a doctor at Bundaberg Hospital but for the courageous actions of Toni Hoffman, one of the hospital's nurse unit managers. When management would not deal with her complaints about Patel, Hoffman ultimately caused the matter to be aired publicly, notwithstanding the law.

If the assistant director of the FBI, Mark Felt, had not briefed The Washington Post after learning that the US Department of Justice, the FBI director and the White House were involved in a cover-up, the extent of the Watergate scandal would not have been uncovered. President Richard Nixon would not have had to resign, and two US attorneys-general, along with Nixon's chief of staff and a bevy of other White House officers, would have escaped jail.

The British parliament and public were misled about the sinking of the General Belgrano during the Falklands War, until a civil servant, Clive Ponting, disclosed the truth to the opposition. The secretary of state for

defence, John Nott, had to resign; but so did Ponting, after the government prosecuted him albeit unsuccessfully for revealing government information.

This is the major problem with government. Common law or statute law so restricts public servant communications that the public has no right to know about government failings. And freedom of information laws are easily frustrated. Officers withhold information to make the government happy.

The "Dr Death" episode in Queensland is important, but not because Patel was accepted by health authorities without checking his credentials. Patel was not the first or last of the Dr Deaths operating in Australia's public hospitals.

The Patel affair clearly shows that the government rewards and supports cover-ups. As Podger says, officers too often act in the government's political interests, not in the public interest.

The challenge for the Bundaberg Hospital commission of inquiry, and all commissions established to investigate whistleblower allegations, is to propose an environment which unambiguously allows, even requires, public servants to disclose government failures that those governments cover up or ignore.

Tony Harris is a former senior economist with the commonwealth and former NSW auditor-general.

Staff on notice if they talk to media

Gold Coast Bulletin,
30 June 2005, p. 7

STAFF at the Gold Coast Hospital are being threatened with dismissal over media leaks.

Nurses who contacted The Bulletin yesterday said they had been warned verbally and a handwritten message had been posted in the emergency department. "The note basically tells us that if we speak to the media . . . and they can trace it back to the person, then we will be dismissed," said one senior nurse.

"It's unbelievable.

"We have been told over and over again if we talk and they work out it's us, we're gone."

She was 'too frightened' to provide a copy of the handwritten warning to the media.

"If I got caught, it would be my job," she said. "I can't afford for that to happen."

She said the note first appeared when the furor over the state of the Gold Coast system erupted about a month ago. "Since then, we have been told a number of times.

"If they can identify the leak, we lose our jobs," she said.

Yesterday, Royal Commissioner Tony Morris, QC, who heads the inquiry into Queensland Health, said he was shocked by the gagging report.

"If it's genuine, it is certainly a matter of concern," he said.

"It would definitely be something the inquiry would have to consider if submitted."

Despite the threat of a witchhunt to track down the source of hospital leaks, The Bulletin was inundated with calls from nurses and health care workers yesterday.

The death of senior male nurse Phil Stubbs, who was kicked by a mentally ill patient, inspired others to come forward with information about bullying and the state of the Coast health system.

"The thing is, we are professionals. We love this job. It's the only thing that keeps us going," said the nurse.

Whistleblower Dr Jan Howes, who raised concerns about 'appalling conditions' at the hospital in early May, said she wasn't surprised by the dismissal threat.

Laws fail those who speak up

Tess Livingstone
and Brendan O'Malley

Courier-Mail, 20 July 2005, p. 34

AS many as 30,000 Australian public servants each year could be "blowing the whistle" on potential wrongdoing in their departments and agencies, yet their fate remains largely unknown, Griffith University research shows.

Senior lecturer in law A. J. Brown, a visiting fellow at the Australian

National University in Canberra, said the recent case of Bundaberg Base Hospital nurse Toni Hoffman highlighted the inadequacies in the state's Whistleblower Protection Act 1994.

Ms Hoffman, a nurse who blew the whistle on Dr Jayant Patel, claimed she was bullied for raising concerns about his competence.

"I have put in an official submission to the Tony Morris inquiry on this issue," Dr Brown said.

"The Hoffman case is consistent with people's concerns that the Act looks very good on paper, but there is evidence government agencies are only just now getting around to implementing it.

"Even if this was just a personality clash with Dr Patel, there was a public interest component right from the word go and there is no evidence it was treated as such."

Dr Brown, who recently spoke at a national conference on whistleblowing at the ANU, has been awarded two large grants to lead a three-year national project into public interest disclosures in the public sector.

Researchers from five universities were involved in the project, Whistling While They Work, which attracted a three-year grant of \$585,000 from the Australian Research Council and about \$700,000 from 12 partners including the Federal and Queensland Governments, the Commonwealth and Queensland Ombudsmen, the Australian Public Service Commission and the Queensland Crime and Misconduct Commission.

Dr Brown's preliminary findings were contained in a report, *Speaking Up: Creating positive reporting climates in the Queensland public sector*, released by Crime and Misconduct Commission chairman Robert Needham.

Despite the poor image of the treatment of whistleblowers in the state, Dr Brown concluded in the report that Queensland whistleblowers were more likely to be listened to, and vindicated, than other complainants.

"However we have also found that possibly around 1.8 per cent of all public servants find themselves blowing the whistle on suspected wrongdoing each year, a substantial figure with very little known about how their welfare and associated

internal workplace conflicts are then managed," he said.

He expected no problems in encouraging public servants with good stories to tell to come forward.

Mr Needham said the commission was proud to have commissioned the initial research in *Speaking Up* and to host the first steering committee meeting of the national project.

"Time and again the information provided by public officials has been fundamental to exposing corruption," Mr Needham said.

Spooks toe the party line: whistleblower

Nick Leys

The Australian, 25 July 2005, p. 4

A HIGH-RANKING intelligence officer has spoken publicly for the first time about claims of cover-ups, bullying and recrimination in the Australian Defence Force and security agencies.

Lieutenant Colonel Lance Collins was one of several intelligence officers who highlighted the existence of a pro-Indonesia group of bureaucrats, academics, media and business people — the Jakarta Lobby — who were influencing Australian foreign policy before the sending of troops to East Timor in 1999.

Speaking on the ABC's *Australian Story*, which will be screened tonight, he claims the quality of Australian intelligence has been suffering because the system "is very heavily weighted to produce a certain answer that is acceptable to a certain political party and its agenda, rather than the nation and its wellbeing".

"The problem with our intelligence system is it's the politicians that choose, or approve the choosing of, the bureaucrats who run it." Lieutenant Colonel Collins's claims are the focus of a report by Inspector-General of Intelligence and Security Ian Carnell that is expected to be released next month.

He has since been moved to a training position, despite his claims being substantiated in an investigation by Captain Martin Toohey in 2003.

Lieutenant Colonel Collins says he has chosen to break his silence out of concern for Captain Toohey.

"Since I became involved in this thing six years ago, I've been confronted with a legion of hired liars who keep pushing this message — I'm just doing my duty, I'm doing what I'm told — and that's actually the ethics of the hitman, nothing personal, just business." Lieutenant Colonel Collins angered his superior officers when he accused the Defence Intelligence Organisation of factual errors in their analysis of East Timor. He accused the federal Government of turning off an intelligence link between DIO and Australian troops in East Timor for 24 hours as a way of punishing him for his behaviour.

The Government has denied both his allegations and the findings of Captain Toohey, who agreed with Lieutenant Colonel Collins that a pro-Jakarta lobby existed and that DIO "generally reports what the Government wants to hear".

Regulations limit whistleblowers

Concern as state public servants are told to make complaints in-house

Farrah Tomazin

The Age, 21 June 2005, p. 7

PUBLIC servants wanting to expose alleged corruption in their departments have been shackled by changes to Victoria's whistleblower rules.

Government regulations ban private companies from receiving such complaints.

The change means public servants have fewer options to raise allegations outside the bureaucracy.

While they can make complaints to the Ombudsman, or to their own employers, they are prevented from turning to private investigation firms, which used to act as independent third parties.

Critics fear the change will deter people from exposing misconduct in department ranks.

"Forcing people to go to their own departments with information on corruption or misconduct really does make it difficult to be a whistleblower in this state," said the Opposition's scrutiny of government spokesman, Richard Dalla-Riva. "Why would the Bracks Labor Government want to

control what is being said about its departments - what has it to hide?"

The regulations were introduced by Attorney-General Rob Hulls in 2002, but came to light this year when Glenn Birrell, a former Victorian detective-sergeant who now runs a private firm specialising in whistleblower services, complained to the Government after finding that his business, Your-Call Pty Ltd, specialist in disclosure management services, could no longer receive complaints from public servants under state laws.

Mr Birrell said the move undermined the Ombudsman's own guidelines, and ought to be re-examined.

"If people genuinely want to raise concerns or blow the whistle in relation to corruption, they're more likely to do it outside of the organisation," he said.

"What concerns us is if the whistleblower now wants to come forward with a complaint, this regulation will void them of their opportunity to make a protected disclosure."

But Mr Hulls said whistleblowers working in Government departments were covered by "robust legislation" and were encouraged to speak out.

"This legislation was never about lining the pockets of the private investigator industry ... it is about assisting the public sector to own and address serious wrongdoing within its ranks," Mr Hulls said.

"The whistleblower legislation is all about making public bodies accountable and transparent in their handling of serious misconduct or maladministration in the public sector."

Under the state's whistleblower laws, private companies can still be contracted by the public sector to investigate whistleblower complaints — despite being banned from receiving them. The Ombudsman also has the power to oversee complaints, or take over an investigation from a public body if he is dissatisfied with its progress.

A spokesman for Ombudsman George Brouwer said a review of the Whistleblowers' Protection Act was under way, and concerns about the Government's regulations could be examined as part of that review.

Push for inquiry into art gallery

Joyce Morgan

Sydney Morning Herald,
26 September 2005

Two whistleblowers have called for a public inquiry into the behaviour of the National Gallery of Australia and the Federal body that oversees the health and safety of federal employees.

The former gallery employees say their five-year fight over health and safety concerns has been vindicated by a report that found it highly likely the gallery suffered sick-building syndrome in the mid-1990s.

The report, prepared for the federal regulator Comcare, found no evidence of a cover-up of staff illnesses, including cancer cases, when an inquiry into health and safety was conducted in 2001.

But the report's author, Robert Wray, recommended an additional inquiry into possible links between cancer among gallery security staff and the gallery's environment.

The cancer cases came to light in January when the *Herald* disclosed internal gallery documents that showed five security guards had been diagnosed with cancer between 1997 and 2002, three of whom have since died, and another nine cases over an unspecified period.

Bruce Ford, a former head of conservation, and Brian Cropp, a former fitter and turner, made public concerns about the building in 2000. They say insufficient maintenance of the air-conditioning system was affecting the health of staff.

Mr Cropp was later found to have been illegally sacked as a result of his complaints.

"We feel totally vindicated," Mr Ford said. "We want a public inquiry under section 55 of the Occupational Health and Safety Act."

This would require evidence to be given under oath.

Mr Cropp said an inquiry should also examine what he called an inherent conflict of interest in Comcare's dual roles as federal regulator and insurer.

"[Comcare] is also the insurer, and the only way to get out of these claims is to not find any problems," Mr Cropp said.

The gallery's deputy director, Alan Froud, rejected the sick-building finding yesterday, saying there had never been any evidence that the gallery's environment was a problem.

"I think taxpayers' interests would be best served by saying enough is enough," he said.

IT whistleblowers gagged and bound

Julian Bajkowski
and Michael Crawford
Computerworld,

Vol. 28, No. 5, 3 August 2005

Information technology managers and professionals are finding it nearly impossible to stay on the right side of the law and keep their jobs.

At least that's the verdict following an overwhelming reader response to last week's *Computerworld* expose, "Technologists face ethical bind," July 27, page 1, about the ethical dilemmas facing IT managers.

The article, which pointed to the problem of employers putting pressure on IT departments to destroy data that could be used as formal court evidence, prompted a flood of confidential and anonymous complaints, horror stories and tips.

Out of almost 20 responses to the story, IT executives across the public and private sectors said fear of retribution from their own organizations stopped them from speaking out about unethical or illegal conduct.

All cited the threat of financially crippling legal action and loss of career as the main reasons why they kept quiet in the face of unconscionable action from their superiors.

In one example given to *Computerworld*, an IT team was recruited for a "special project" at a financial services company. They were all forced to sign non-disclosure agreements — only to discover they were working on customer data which had clearly been stolen from a competing organization.

"When the issue was raised we were told in no uncertain terms the company would sue us into the ground. It never got off the ground because people just resigned because it was both illegal and badly managed," one reader wrote.

Another reader says he found himself "scapegoated" out of his company after warning his CEO's actions were likely to come unstuck in front of regulators. He said he received no management support.

On the IT security side, readers in banks said "auditors" are routinely "parachuted in to play the grim reaper" to remove staff by finding breaches of computer usage policy. "They are not the sort of people you would ever trust or want to employ on a team. But you can't get rid of them. They're in with management," said one bank source.

On the vendor side, a number of readers said it was common to be offered "career inducements" to swing deals, not least the promise of lucrative work elsewhere.

The example cited in last week's article was Pan Pharmaceuticals IT manager Karl Brooks, who gave evidence in a Sydney court that he was ordered to wipe incriminating data from a hard drive to prevent auditors from discovering irregularities.

Corporate solicitor at Gadens Lawyers Stephen Ross says IT staff need to think carefully about their legal exposure before speaking out because of what he calls "quite limited protections" for whistleblowers. Pointing to specific whistleblower provisions in the Corporations Act (Part 9, 4AAA), Ross says legal protection is afforded only for "quite specific people informing on quite specific people." Those not covered can face defamation proceedings, especially if whistleblowing information is conveyed in writing. Specifically to be protected by the Corporations Act, the person disclosing the information must be either: an officer of the company; an employee of the company; a person contracted to provide goods or services to the company; or an employee of the latter.

However, such people can only disclose the information to: the Australian Securities and Investments Commission; the company's auditor or a member of an audit team; a company director, company secretary or a senior manager; or a person authorized by the company to receive such information.

As if that's not enough, the person disclosing the information must have "reasonable grounds" to believe a

contravention of the Corporations Act has occurred and act in good faith.

Dismay at Abelson departure

Bernard Lane

The Australian, 5 October 2005, p. 25

ACADEMICS at Macquarie University have expressed "shock and dismay" at the resignation of Peter Abelson, a prominent economist and critic of declining standards in Australia's rapidly expanded universities.

Professor Abelson, listed as a whistleblower last May in a Sydney newspaper exposé of universities "dumbing down" for foreign students, resigned in August over the university's disputed policy on outside employment. He winds up at Macquarie in January. Professor Abelson, secretary of the Economics Society of Australia, has a long history as a consultant, including through Applied Economics, where Glenn Withers, also a well-known economist, is his joint managing director.

Said a Macquarie academic who declined to be named: "He's one of the most prolific researchers in the economics department."

"Supposedly they've been jumping on outside employment because there wasn't enough research [in the division of economic and financial studies]. But the truth is they're pursuing people who question the administration, regardless of whether they are doing research or not."

Professor Abelson declined to comment.

"He was told that he had to report what he was doing [as outside work] and seek approval [but he failed to fully comply]," Macquarie's vice-chancellor Di Yerbury said yesterday.

In August, economics staff passed a resolution (25-1) expressing "shock and dismay" at the Abelson resignation. "This is a tragic loss of a highly respected and productive academic who has served the department, the division and the university extremely well over the last 30 years, and who will be very difficult to replace," it read.

A second resolution (25-0 with one abstention) stated concern about "continued inconsistencies and

uncertainties" in the outside employment policy applied by the dean, Ed Davis. This year, division staff passed a resolution against the policy and its application.

In May *The Sydney Morning Herald* reported claims that universities were compromising standards to accommodate fee-paying foreign students, often with poor English, and quoted Professor Abelson.

Professor Yerbury said his quoted claims were "extremely, grossly inaccurate" and any repetition would attract litigation. She said she would be meeting the *Herald's* managing director over the issue.

A Macquarie media policy, dated July 28 and circulated to staff, said whistleblowers were welcome but any media comment "designed to bring the university into disrepute" would be investigated for possible disciplinary action.

The controversy over Macquarie's race academic Andrew Fraser erupted in mid-July.

Earlier this year, *Economic Papers*, a refereed journal of the economic society, published an Abelson paper based on a survey of heads of economics departments.

"Most respondents considered that student standards have declined and that the main causes include lower entry standards, high student-staff ratios and a declining culture of study," Professor Abelson wrote.

Customs warning 'a threat' to staff

Martin Chulov

The Australian, 19 August 2005, p. 6

THE Customs service has threatened staff with "serious consequences" if they co-operate with a parliamentary inquiry into aviation security or brief the media about their concerns. An internal Customs email sent last month warned that staff should consider their obligations to the protection agency ahead of a duty to publicly disclose any aspect of its performance.

The Customs Officers Association has said the email was a direct threat to the functioning of the Joint Public Accounts and Audit Committee, which is inquiring into security at the nation's air and sea ports.

"The notice is not even a thinly veiled threat for officers to be silent," the association says in its submission to the inquiry.

"Why should anyone run the risk of making any career-threatening comment about operational concerns when there is no meaningful protection available and when it is clear that ACS management will act against anyone who criticises the administration?"

Association president Peter Bennett said staff had been intimidated by the Customs email into not co-operating with the committee.

The inquiry would be severely hamstrung in the absence of strong and fearless testimony, Mr Bennett said.

The public accounts committee launched its inquiry in the wake of revelations contained in a classified Customs report published in *The Australian* in June about serious safety breaches at Sydney airport.

The report revealed that up to 10 categories of staff working at the airport were suspected of involvement in drug-smuggling, or stealing from passengers.

It detailed illegal activity by baggage handlers, air crew, ramp and trolley workers, security screeners and cleaners.

Up to 39 of the 500 security screeners had serious criminal convictions, the report showed. Two of the convictions were for conspiracy to import a commercial quantity of drugs.

In the wake of the revelations, the Howard Government announced a \$212 million security overhaul of all 45 national air and sea ports.

Aviation security consultant John Wheeler was hired to conduct a review of security in the most sensitive areas of domestic and international airports, which had long been suspected of being hotbeds of crime.

Sir John has now left Australia to write his report after spending only three weeks here.

The Australian Federal Police and Customs internal affairs officers launched an intensive hunt to expose any Customs officer who was thought to have been behind the leak.

Mr Bennett said yesterday the telephone of at least one officer had been tapped as part of the investigation.

"Why is this person now being chased by Customs?" Mr Bennett asked the committee.

"It was a public service," he said. "The bloke ought to be given a medal."

Customs last night denied it had tried to gag the staff.

"Customs appropriately provided advice to staff on their rights and obligations if they were considering whether to disclose information or make public comment," a management spokesman said.

Whistleblowing tactics: the backfire approach

Brian Martin

Overland, No. 180, Spring 2005,
pp. 45-48 (abridged)

We know what happens to whistleblowers: harassment, ostracism, dismissal and other reprisals, often leading to financial, emotional, health and relationship problems. In addition, few whistleblowers seem to bring about any change in the problem they speak out about. Knowing this, there is a burning question that is easy to articulate: "How can whistleblowers do better?" To develop better tactics, it is useful to examine injustices that cause outrage. Bear with me while I go through an extended example: the Dili massacre.

The Dili backfire

On 12 November 1991, thousands of East Timorese joined a funeral procession in Dili, using the occasion to protest against the Indonesian occupation of the country. As the crowd entered Santa Cruz cemetery, Indonesian troops that had surrounded the marchers opened fire without warning.

Unlike earlier massacres, this atrocity was witnessed by western journalists and captured on videotape by filmmaker Max Stahl. Their reports led to international outrage against the Indonesian occupiers and a massive boost for the international support movement for East Timorese independence. The brutal assault on the funeral procession, intended to intimidate and subdue the independence movement, instead had the opposite effect of greatly increasing support for it. In short, the attack backfired on the Indonesian government.

In attacks like this, there are five methods commonly used by attackers to inhibit outrage. The first is cover-up. In previous massacres in East Timor, censorship had prevented information getting out in a timely and authoritative fashion. After the Dili massacre, the Indonesians cut off phone service out of East Timor. They also alerted Australian customs to search Max Stahl, but he wisely gave his videotapes to someone else who smuggled them out of East Timor.

The second method of inhibiting outrage is to devalue the target. Indonesian officials made derogatory comments about the protesters, for example calling them “scum,” but this abuse, and Javanese assumptions of ethnic superiority, had little salience outside Indonesia.

The third method is to reinterpret the events. Indonesian officials blamed the events on the protesters, alleging they provoked the attack and that the shooting was unintentional. They gave a figure of just 19 dead, later raising it to 50. A separate investigation counted at least 271 killed.

The fourth method of inhibiting outrage is to use official channels such as inquiries and courts to give the appearance of justice. Immediately after the Dili massacre, the Indonesian government set up an inquiry, which gave mild sentences to a few officials. The Indonesian military had its own inquiry that whitewashed the perpetrators.

The fifth and final method regularly used to inhibit outrage from injustice is intimidation and bribery of targets, witnesses and functionaries. After the shooting, Indonesian troops arrested, beat and killed numerous East Timorese independence supporters. This may have intimidated some East Timorese but it had little effect on international audiences.

Thus the Indonesian government and military used all five methods for inhibiting outrage from the massacre, but in this case they were singularly unsuccessful, mainly because the eyewitnesses and videotape challenged the usual censorship and government disinformation and took the message to a receptive international audience.

A similar pattern can be found in other attacks that backfired, such as the 1960 Sharpeville massacre in South

Africa and the 1930 salt march in India. Furthermore, the same five methods of inhibiting outrage can be found in other types of injustice, such as censorship, police beatings, torture and war.

By looking at methods of inhibiting outrage, it is possible to gain insight into how to *promote* outrage. Cover-up can be countered by methods such as collecting documents, writing stories and using alternative media. Devaluation can be countered by humanising people under attack, for example through meetings and personal stories. Reinterpretation can be countered by presenting the facts and emphasising the injustice involved. The false appearance of justice through official channels can be countered by avoiding or discrediting these channels. Intimidation and bribery can be countered by refusing to acquiesce and by exposing these methods as improper.

Whistleblowing usually involves a double injustice. First is the problem — corruption, abuse, a hazard to the public — about which a person speaks out. Second is the treatment of the whistleblower. Both of these have the potential to backfire, if people recognise them as matters for concern and information about them is communicated to receptive audiences. Therefore it is predictable that perpetrators will use the five methods of inhibiting outrage. That is exactly what can be observed in case after case.

How whistleblowers go wrong

Cover-up is first. Those who attack whistleblowers usually like to keep things quiet. Only foolish employers announce to the world that they have sacked a prominent dissident. When whistleblowers go to court, employers often agree to a settlement under the condition that neither party speaks about the settlement itself. Acceptance of such a so-called gagging or silencing clause is often a precondition for a settlement.

Whistleblowers often want to keep things quiet too. Many of them are embarrassed and humiliated by the allegations against them and do not want others to be aware of their difficulties. Often they are making complaints to official bodies and assume that publicity will hurt their case. In many cases, lawyers advise

keeping quiet. The upshot is that whistleblowers commonly cooperate with employers in covering up information about what is happening. The same applies to the original problem about which they spoke up. The result is that outrage is minimised.

The second method of inhibiting outrage is to devalue the target, in this case the whistleblower. This is part of the standard treatment: harassment, referral to psychiatrists, reprimands and the like are potent means of discrediting a person in the eyes of fellow workers. Spreading of rumours is part of the package, including malicious comments about the whistleblower’s work performance, personal behaviour and mental state. To counter this, whistleblowers need to behave impeccably — a difficult task when under intense scrutiny and immense stress — and to document their good performance and behaviour. This can be done, but only if the whistleblower is able and willing to muster the information and make it available.

Reinterpretation of the events is the third method of inhibiting outrage. Employers typically deny any wrongdoing and say that treatment of the employee is completely justified and nothing to do with public interest disclosures. Whistleblowers need to challenge the official line by providing solid documentation for every one of their claims.

The fourth method is to use official channels that give only the appearance of justice. An employer might dismiss an employee and then, when the employee challenges the decision, put the matter through an appeal process that rubber stamps the original decision. That is indeed what happens in many cases. But there is another dimension to official channels. Whistleblowers regularly go to outside bodies, such as ombudsmen, auditor-generals, anti-corruption commissions, administrative appeals tribunals and courts. They contact politicians. They try to invoke whistleblower protection laws.

It is easy to assume that these bodies do indeed provide justice. In practice, whistleblowers find that they almost never work. William De Maria in his study of whistleblowers (see his book *Deadly Disclosures*) found that

they reported being helped by an official body in less than one out of ten approaches, and in many cases they were worse off.

Yet most whistleblowers believe that justice is to be found somewhere in the system, so they make a submission to an agency, wait months or years and then, when the result is negative, go on to another agency. This is an ideal way to reduce outrage from the injustice being done, because the official bodies give the appearance, though seldom the substance, of dispensing justice.

The fifth method of inhibiting outrage is through intimidation and bribery. Whistleblowers are often intimidated by threats and actual reprisals, and the way they are treated serves as an object lesson to co-workers, most of whom avoid the whistleblower for fear of becoming a target themselves. Employees know that their jobs are safer if they do not speak out; sometimes promotions are in order if they join in a witch-hunt.

It is perhaps no surprise that all five methods of inhibiting outrage are found in whistleblower cases. What is disturbing is that whistleblowers so often collaborate in these methods, especially in cover-up and using official channels. They can be highly reluctant to focus on taking their message to the widest possible audience. Yet this has proved time and again the most effective way to mobilise support for addressing the matter raised by the whistleblower and for providing personal protection from reprisals.

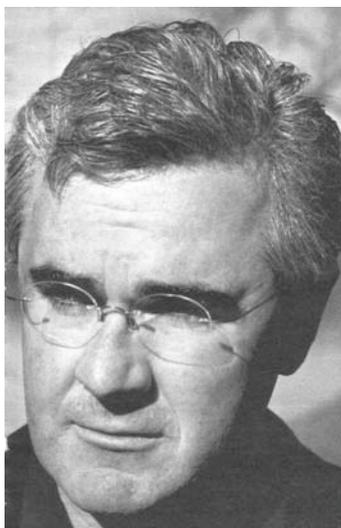
Andrew Wilkie

Just a week before the United States government launched its invasion of Iraq in March 2003, Andrew Wilkie, an analyst in the Office of National Assessments, resigned from his position and challenged the Australian government's reasons for joining the assault. Through good sense and good luck, Wilkie avoided every one of the traps that snare most whistleblowers.

First, and most importantly, Wilkie spoke out in public. He did not report his concerns through official channels by writing a memo or talking to his boss. Instead, he contacted veteran journalist Laurie Oakes, who made Wilkie's resignation and revelations

into a top news story. Wilkie stuck with this approach, doing numerous interviews and giving many talks in the following months. His approach was the antithesis of cover-up.

Second, because of who he was and how he behaved, Wilkie resisted devaluation. His background was conservative. In public, he wore a suit and tie and spoke calmly and factually, a terrific performance for someone under so much stress. His background, demeanour and principled stand undermined attempts to portray him as a traitor or a radical. When government figures made personal aspersions against Wilkie in Parliament and claimed that he was not an Iraq expert, this backfired as journalists exposed their unscrupulous behaviour and double standards.



Third, Wilkie kept the focus on the main issue, the official reasons for Australia joining the attack on Iraq. He consistently countered the government line and did not get distracted into issues outside his expertise.

Fourth, Wilkie did not use official channels to make his protest. By resigning, he avoided all the usual reprisals at work. He also avoided the exhausting and time-consuming appeals to various official bodies.

Fifth, Wilkie stood up to intimidation. He might have been charged under one of the government acts that require public servants to keep quiet, but by going public he made it difficult for the government to act against him. By speaking out, he also resisted the bribery implicit in holding a job by keeping quiet.

Wilkie also had perfect timing. To maximise outrage, the message needs to get to an audience when it is most receptive. Just before the invasion of Iraq was the ideal time, when media attention was intense and debate over justifications was fierce. Wilkie punctured the apparent unanimity of government Iraq experts, and so made a tremendous impact on the debate. Wilkie's timing was also ideal in that mass protest against the Iraq invasion was at its height: there was a large receptive audience for his message.

According to the backfire model, Wilkie did just about everything right. But that does not mean things were easy for him. After all, he sacrificed his career for the sake of speaking out. But it is worthwhile remembering that large numbers of whistleblowers lose their careers, and years of their lives, in a futile effort to obtain justice within the system. Seldom do they have any lasting effect on the issue about which they raised the alarm. Whistleblowers have much to learn about being effective. Whether or not one agrees with Wilkie's claims about Iraq, his method of speaking out is a model for others.

Conclusion

Whistleblowers and their supporters have much to gain by thinking strategically. If they put themselves in the shoes of the guilty parties, they can imagine tactics that will keep the main issue off the public agenda. Cover-up, attacks on the credibility of the whistleblower, superficial explanations and intimidation are predictable, so preparations should be made to counter them. Official channels also serve to keep issues out of the public eye by moving attention to the treatment of the whistleblower and treating the matter in-house. It is an immense challenge to most whistleblowers to stop assuming justice can be obtained within the system and instead to seek support and vindication in the court of public opinion.

For more information about backfire analysis, see www.uow.edu.au/arts/sts/bmartin/pubs/backfire.html

Articles

A US police whistleblower's story

Teresa Chambers
tcchambers@honestchief.com

The plight of whistleblowers — those employees who sound the alarm about anything from dangerous conditions in the workplace to missed or ignored intelligence regarding our nation's security — is a story that seems to grow stronger and with more frequency every day. My guess is that those stories have always been there; I suspect I am just paying closer attention to them now.



You see, I joined the “ranks” of whistleblowers on December 2, 2003, when a major newspaper printed a story in which I confirmed for them what many of us already knew — we, the members of the United States Park Police, could no longer provide the level of service that citizens and visitors had grown to expect in our parks and on our parkways in Washington, D.C., New York City, and San Francisco. The world changed for all of us on September 11, 2001, and the expectations of police agencies across

the country grew exponentially overnight. As the Chief of the United States Park Police, an organization responsible for the safety and security of some of America's most valued and recognizable symbols of freedom — including such notable sites as the Washington Monument, the Statue of Liberty, and the Golden Gate Bridge area — I knew it was my duty, as chiefs of police across the country do every day, to inform the community of the realities of the situation.

For being candid — for being “honest” — while still being supportive of my superiors, I was, without warning, stripped of my law enforcement authority, badge, and firearm, and escorted from the Department of the Interior by armed special agents of another federal law enforcement entity in December of 2003. Seven months later, the Department of the Interior terminated me.

Frighteningly, the issues I brought to light about our citizens' and visitors' safety and security and the future of these American icons have not been addressed — other than to silence me. In fact, there are fewer United States Park Police officers today than there were in 2003 when I was sent home for daring to say that we weren't able to properly meet our commitments with existing resources. Other security concerns I raised internally have also gone unaddressed.

Imagine the outcry if I had stayed silent and if one of those symbolic monuments or memorials had been destroyed or the loss of life had occurred to someone visiting one of those locations. I did not want to be standing with my superiors among the ruins of an American icon or in front of a Congressional committee trying to explain why we hadn't asked for help.

Despite the serious First Amendment *and* security implications of my case for each American, there has been no Congressional intervention, no Congressional hearing, no demand of accountability by elected officials for those who took action to silence me and who have ignored all warnings about the perils to which I alerted them. Through it all, it has become clear that federal employees have little

protection for simply telling the truth. Following my termination and the publicity that accompanied it, it is unlikely that any current federal employee will be willing to speak up with straightforward, accurate information about the realities of any danger we face now or in the future.

My story is told on a website, www.honestchief.com, established by my husband in December 2003 so that the American people could “witness” the issues in this case. Through the webmaster's regular updates, the website has provided transparency to my situation by including an audio library and making key documents available for viewing, including the transcripts of depositions of top officials and their testimony during a key administrative hearing.

Suppression of information is spreading — gag orders, nondisclosure agreements, and the government's refusal to turn over documents. In agencies that span federal service, conscientious public servants are struggling to communicate vital concerns to their true employers — the American public. Is anyone listening?

Speaking about airports

John Suter
suter@gci.net

I worked at the Anchorage International Airport, in Alaska, from 1992 to 2000. During this time I advocated that the airport should upgrade on aviation safety and security. On the back side of the airport there is a road that is not too far from the runways. The road signs were being shot out. If one was to look through the bullet holes in the signs one would see the airplanes landing and taking off, meaning these airplanes were down range of the firing of these guns.

My job was to replace these road signs. I asked the airport police about patrolling the back side of the airport for the shooters to see if something could be done about it. They informed me that the solution was to replace the signs as they were shot up, not to stop the shooting of the signs. In disbelief I

went to the airport management on this, but to no avail: my message was dead on arrival.

I thought this situation was unacceptable and that something must be done about it. So I contacted the news and they did a story on it. Then I copied the story and sent it to all airlines across the world that flew into the Anchorage International Airport. From there the airlines contacted the airport management and informed them that they were going to fly into and out of the Fairbanks International Airport and not to the Anchorage International Airport any more. The airport management put the airport police back on more patrols for the back side of the airport. The management had a meeting with me and I was picked out as an upstart troublemaker.

When I was moved to the midnight shift, my co-workers told me that our supervisor took drugs and smoked dope out on the runways during our shift. I asked them why they did not report it. They informed me that the supervisor was the personal friend of the management and if they reported the supervisor for taking drugs the management would retaliate. So, I reported it to a state legislator and the legislator got my supervisor drug tested. My supervisor soon did not work at the airport anymore. The management was getting very angry at my disruption at the airport.

One night on low visibility conditions with heavy ice fog I was sent out to sand the runways. Our airport has the runways set out like a T with a double top on the T. I was sanding the runways and was heading toward the first top of the T, going south on the runway toward the first east-west runway. But I missed the first east-west runway because the lights were turned down to step 1 where I could not see them. The lights have steps 1-5 with 5 being the brightest. Since I did not see the first runway, I went onto the second east-west runway almost having a head-on collision with a landing passenger airliner.

All of my co-workers had permission to ask the FAA tower to turn up the lights before being sent out on the runways at night during low visibility conditions. Since I was noted as a troublemaker for reporting on aviation safety issues at the airport, the other



supervisor denied me permission to ask the FAA tower to turn up the lights in these conditions like I always used to do before going out on them. I was told that the supervisor would do this for me. But that night he didn't.

The airport management removed me from field maintenance and put me over to building maintenance. While I was at my new job I started to check doors around the airport to see if they were secured. I found one that was not secured and anyone could just open it quickly, easily bypassing airport screening and go directly to the airplanes unchecked. I reported it to the chain of command. They chose not to do anything about it. They did not want to rock the boat with the heavy-handed management and become troublemakers like myself.

So I reported the unsecured door to airport dispatch. Airport dispatch reported it to the airport management. The management had a full-scale meeting on this. The meeting was not about why the door was not secured, but why was I in the area to know that the door was unsecured and why was I disrupting airport dispatch with this information. It was a meeting on how to kill the messenger and not about the message. I almost got fired for reporting the unsecured door. I received a letter of discipline in my file for reporting it.

In the meantime I was sending out letters for aviation safety to the state government officials, airlines, aviation safety associations, etc. to see if we could have a rule stating that all airport maintenance employees could have permission to ask the FAA tower to turn up the lights out on the runways

during low visibility conditions before being sent out to work on them. By this time the airport management had enough of me and fired me. The charge was for making false and misleading statements. When I asked what were the false and misleading statements and who I had made them to, I was told that the information was confidential and no one was allowed to know.

The union said to me on my firing that if one does not talk, then one will not get into trouble. If one talks, then one is on their own. I went to 15 attorneys on this. They stated that I was 100% on the side of the law, but it would cost 50-60 thousand dollars to take the state to court. So, like the vast majority of people who work at US airports I could not come up with that kind of money while being unemployed, so I had to let it go. What it comes down to is that local government airport maintenance employees have to turn the other way on aviation safety, security issues or take their chances of being fired for speaking out on them.

It does not help the aviation industry to have these people silenced from speaking out on aviation safety, security issues because they are right there at airports seeing things that need to be done. Most people are not going to put their jobs on the line. What needs to be done is to include the local government airport maintenance employees in with the airline employees and their contractors to have the same federal whistleblower protection so that they too can speak out for aviation safety and security issues.

Background to the apology to Peter Walsh

On 24 August 2005, Peter J Walsh sent a letter to “the Editor and the Governing Board” of *The Whistle*. Peter Walsh was senior assistant commissioner of the NSW Police before his retirement in 2003. In his letter, he referred to the July 2004 issue of *The Whistle* (No. 38), in which he was mentioned in two sentences, one on page 10 and one on page 11, as part of the article “Deaths of convenience: possible homicides in which police are suspected of being involved.”

Walsh in his letter said that the sentence on page 10 gave rise to five imputations concerning himself and the sentence on page 11 gave rise to nine imputations that “have injured my good credit, character, fame, reputation and my current profession, in particular, as a member of the Parole Board.” He stated that “It is my complaint and assertion that the matters published and imputations raised against me are false.” He demanded an apology or retraction from the editor to be published in the next issue of *The Whistle*.

On receiving this letter on 29 August, I rang Walsh and heard what he had to say. I offered him the opportunity to write a reply to be published in the next *Whistle*. He didn’t want to do that: he wanted me to write the apology. He said it should be on page 1. Therefore I asked questions to clarify his statements.

I drafted the following apology and posted it to Walsh as part of a letter sent 30 August.

Apology

In the July 2004 issue of *The Whistle* (Number 38, page 11), it was stated that then NSW Police Assistant Commissioner Peter Walsh was a friend of Bob Williams, who was linked to unexplained deaths in the Port Macquarie region. I accept that the statement that Peter Walsh was a friend of Bob Williams is incorrect. Peter Walsh was not a friend of Williams, did not socialise with Williams, did not attend Williams’ farewell and did not attend Williams’ funeral. Peter Walsh was not the local commander, but rather was the district commander, later becoming Northern Region commander.

Furthermore, all the deaths in the region mentioned in the article occurred well before Walsh’s time there.

I apologise for any hurt and embarrassment to Peter Walsh due to incorrect statements published in *The Whistle*.

Brian Martin, *editor*

On 15 September, Walsh again wrote to “The Editor and the Governing Board” saying that the apology that I had drafted was not to his satisfaction. He did not say why this was so. He included a correction and apology for publication in the November issue of *The Whistle*.

CORRECTION AND APOLOGY

In July 2004 two articles appeared on pages 10 and 11 of ‘The Whistle’ issue Number 38 in relation to matters involving Mr. Peter Walsh, retired Senior Assistant Commissioner of New South Wales Police.

The statements contained in these articles involving Mr. Walsh are incorrect.

The Whistle is informed and accepts Mr. Walsh has at all times acted with integrity and honesty in the execution of his duty whilst a serving member of New South Wales Police.

The Whistle regrets any embarrassment the reference to Mr. Walsh has caused in the July 2004 issue.

The Whistle unreservedly apologises to Mr. Walsh for any hurt suffered by him as a result of the matters published in *The Whistle* in July 2004.

I received this letter on 20 September. In a reply sent 23 September, I reiterated my invitation to Walsh to write a reply to be published in the next *Whistle*. I commented that for him to draft an apology was “quite different” from him writing a reply. I said, “Any apology on behalf of *The Whistle* needs to be accurate.”

I then pointed out which parts of his proposed correction and apology I accepted and which parts required modification. In particular, concerning the third sentence I wrote:

You certainly informed me of this, but I have no way of verifying that it is true. This is not to doubt your word, simply that I am not in a

position to make a statement about matters about which I have insufficient information. You told me during our telephone conversation that *The Whistle* should have checked the statements about you before publishing. Accordingly, I don’t want to publish further statements about you without evidence. So I’d be happy to publish this: “The Whistle is informed by Mr. Walsh that he has at all times acted with integrity and honesty in the execution of his duty whilst a serving member of New South Wales Police.”

On 24 October, just before going to press, a letter from Walsh arrived. We seem agreed on three sentences:

Apology: agreed sentences

Two sentences appeared on pages 10 and 11 of the July 2004 issue of *The Whistle* (No. 38) in relation to matters involving Mr. Peter Walsh, Senior Assistant Commissioner of the New South Wales Police, now retired.

The Whistle regrets any embarrassment to Mr. Walsh caused by incorrect statements or imputations in the July 2004 issue.

The Whistle unreservedly apologises to Mr. Walsh for any hurt suffered by him as a result of incorrect statements or imputations published in *The Whistle* in July 2004.

These are modified versions of the first, fourth and fifth sentences of Walsh’s proposed apology. Concerning the second sentence, a suitable wording seems achievable but requires negotiation. However, regarding the third sentence Walsh stated, “I do not resile from the request I have made in this regard and I expect that fact to be published from you as part of the apology package.”

Because agreement has not yet been reached, no apology is included in this issue. After an apology is agreed, it will be published in the following issue of *The Whistle*.

Brian Martin

Whistleblowers Australia contacts

ACT: 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.

Wollongong: Brian Martin, phone 02 4221 3763.

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

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

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

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

Victoria

Meetings are normally held the first Sunday of each month at 2.00pm, 10 Gardena 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.

Comment from the editor

A central goal of Whistleblowers Australia is to promote a society in which people can speak out without fear of reprisal. In quite a few cases, speaking out has the potential to offend another person. If speaking out was only allowed when no one could be offended, then everyone would need to remain silent. On the other hand, criticism is sometimes inaccurate or unfair.

The resolution of this apparent dilemma is not to shut down discussion but to open it further, in particular by allowing those who are aggrieved to present their own views. Accordingly, I am always receptive to those who would like to publish replies to material in *The Whistle*.

However, not every reply can be published. There are constraints of length, style and relevance. Furthermore, a reply might contain its own dose of inaccuracy and unfairness. These are matters that I as editor try to negotiate. If necessary, issues can be taken to *The Whistle's* editorial board.

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.