

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



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Fred Gulson, tobacco industry whistleblower (see p. 3)

AWB whistleblower left high and dry on the fees front

Caroline Overington

The Australian, 10 April 2006, pp. 1-2

Dominic Hogan suffered a nervous breakdown while working for AWB. He says it was caused by the stress of knowing money was being funnelled to Saddam Hussein's regime.

Exhausted and torn apart by guilt, he quit the monopoly wheat exporter shortly before war broke out in 2003.

Earlier this year, he agreed to blow the whistle on AWB. It is largely because of his evidence that commissioner Terence Cole QC has been able to uncover the truth about Australia's wheat deals with Iraq. Now AWB — which is covering the legal costs of most, if not all, other former employees — appears to have decided that his bills can take care of themselves. Gary Taylor, of Melbourne-based solicitors Clark and Toop, said Mr Hogan had been unable to get AWB to agree to "any reasonable offer to cover the fees." "He appears to have been left out," Mr Taylor said. "AWB is paying the legal fees of its other employees, and its other former employees.

"Our question is, why not our client?"

In a controversial move, AWB originally offered to pay legal fees up to \$50,000 for all former employees, provided there was no "adverse findings against them."

Mr Hogan refused this deal, claiming it was designed to stop him turning whistleblower. He wanted to tell the truth, which involved admitting that he was aware that UN sanctions were being busted, and millions were flowing to Saddam in exchange for a lucrative wheat trade.

Clark and Toop have since put forward a copy of their bill, and say it is nowhere near the amount other lawyers are charging, although it is believed to be in six figures.

"We've put forward what we consider to be a reasonable offer, but we just haven't had a response," Mr Taylor said.

If AWB continues to play hardball with Mr Hogan, the taxpayer may end up footing at least part of his bill.

Mr Hogan is unemployed, having been unable to work since he collapsed with a stress-related disorder shortly before the war in Iraq broke out in 2003. He survives on a weekly workers compensation payment, and must attend regular medical appointments to deal with depression.

AWB spokesman Peter McBride said: "We have agreements with all former employees to cover reasonable costs." He said Mr Hogan had decided not to sign the original agreement "and so my understanding, as of last Friday is, we are still negotiating."

Whistleblowers will be protected

Paul Smith

Australian Doctor,

10 March 2006, p. 16

GPs who alert authorities to suspected abuse of elderly patients will be offered legal protection should campaigners win the battle for mandatory reporting of abuse in aged care facilities.

Next week a national summit, convened by the Federal Government, will meet to discuss elderly abuse and the possibility of introducing a mandatory reporting system.

The Elder Abuse Prevention Association, which supports the push, estimated there were about 80,000 cases of elderly abuse taking place in nursing homes every year — the vast majority still going unreported.

The group's executive director, Ms Lillian Jeter, claimed that mandatory reporting requirements would mean GPs working in aged care facilities could be prosecuted if they failed to report suspicions of abuse.

"For those working with older persons, if they saw suspicious circumstances, under the law they would be required to report it," she said. "There needs to be a statutory requirement to report situations that

are suspicious, with penalty for failing to comply."

However, Dr Paul Nisselle, senior adviser in risk management for the Medical Defence Association of Victoria, stressed that the law was more about the protection, rather than the prosecution, of potential whistleblowers.

"How would any lawyer prove that a doctor had a suspicion about possible abuse but failed to report it? In the vast majority of cases that would be impossible.

"If it is introduced it is going to offer statutory protection to those doctors who report potential incidents of abuse in good faith from being sued for defamation. This is going to empower GPs.

"I think the way the referral system is set up there is an expectation from the aged care homes that the GP is somehow beholden to them. This will allow doctors, where they have concerns about a resident, to demand action from an aged care facility or else threaten a formal complaint."

Words of mass deception

Rod Barton blew the whistle on Australian, US and British lies about Iraq's hidden weapons cache. And the Australian Government has made sure he pays a high price for his stand.

Hamish McDonald reports

Sydney Morning Herald,

13 May 2006, p. 35

For a decade Rod Barton knew the special loneliness of a United Nations weapons inspector in Iraq, teasing out clues from one of the world's nastiest regimes about biological weapons of unspeakable effect.

He worried about assassination by Saddam Hussein's secret services, not an unrealistic fear. He felt the derision of the ascendant hawks in Washington, confident they knew better than the UN inspectors about Saddam's secret weapons.

Now Barton is suffering a new kind of isolation after turning whistleblower on how the American, British and

Australian leaders distorted intelligence to justify their invasion of Iraq and how they condone the torture of Iraqi prisoners.

Back home in Canberra, Barton is ostracised and unemployed in his old intelligence profession, to which at 58 and still formidably incisive, he could still contribute a lot. He looks at the view of the Brindabellas. He roams the world's trouble spots on Google Earth, the satellite imagery website. The house could not be any tidier, nor the garden crammed with any more shrubs.

Barton made waves and is being punished. In March 2004, he and another Australian, the Foreign Affairs disarmament specialist John Gee, resigned in protest from the Iraq Survey Group, set up by the US Central Intelligence Agency to find the Iraqi nuclear, chemical and biological weapons that had been the excuse for invasion. The CIA was refusing to face the truth that Saddam's weapons had been destroyed in 1991.

In February last year, Barton went public on ABC television. Now he has written a devastating book about it, *The Weapons Detective* (Black Inc. Agenda, \$29.95). His security clearances withdrawn, Barton knows he will not be getting any more contracts from his old employer, the Defence Intelligence Organisation, which he had joined as a young microbiologist in 1972.

Old colleagues at the intelligence organisation have been warned not to have contact with him, not even social meetings. In one act of spectacular pettiness, at the insistence of the Prime Minister's staff, Barton and Gee were dropped from the guest list for last year's 20th anniversary meeting in Sydney of the Australia Group, a forum of intelligence specialists from 38 countries on chemical and biological weapons, which the two had helped set up in 1985.

"I knew that blowing the whistle would bring some penalties, but not to this extent," Barton says. "Was I that much a threat to the security of Australia when — what was it I spoke out about: prisoner abuse?"

In his new book, Barton lays out in shocking clarity that the reason for the Iraq invasion cited by America's

George Bush, Britain's Tony Blair and Australia's John Howard was false.

Blair and Howard knew it was false, Barton says. Bush may not have known, because his intelligence agencies were reporting what he wanted to hear.

When shown the Australian intelligence assessment, Howard even asked: "Is that all there is?"

Barton saw both the British and Australian intelligence assessments about Saddam's weapons of mass destruction before the March 2003 invasion. Saddam had at most a few chemical and biological weapons left over from the 1980s, and no means of delivering them. There was no evidence he had resumed WMD programs after UN weapons inspectors were kicked out in 1998.

It was no grounds for war, so the intelligence was doctored — notably in the British "dossier" published on the orders of the British Joint Intelligence Committee chairman, John Scarlett, which claimed Saddam had chemical and biological weapons deployable "within 45 minutes of an order to use them."

Howard cited the British dossier in assuring the Australian public and Parliament his Government had "compelling evidence" that Saddam possessed these weapons. "Is it a lie or is it a spin or what?" Barton said. "But it's certainly misleading the people."

The liars and spin doctors have prospered, the whistleblowers have been shafted. Barton's former UN colleague and friend, the British defence scientist David Kelly, killed himself in July 2003 after being outed for telling a BBC journalist how Scarlett had "sexed up" the Iraq intelligence. Scarlett was still "sexing up" the post-invasion intelligence, Barton shows, but has been made chief of Britain's famous spy service, MI6. Barton shakes his head: "John Scarlett should not head any intelligence organisation." In the CIA, the medals, cash bonuses and promotions go to agents who tell their chiefs about new weapons threats, not the ones who caution the evidence is weak.

In Australia, Barton sees a general culture of compliance in the public service spreading to the intelligence agencies. "You know you're not going to get promoted if you tell the

Government something that's unpopular," he says.

One bit of unwelcome reporting by Barton, to Australia's Defence Department, was the first indication of the special "purgatory" centre being run by US Special Forces at Camp Nama, next to Baghdad Airport.

"High value" prisoners selected for disorientation before interrogation have a hessian bag put over their heads for up to 72 hours, and are deprived of food, water and sleep, made to stand up for long periods, exposed to intense heat or cold, and bashed at random intervals. Unlike the improvised brutality by US soldiers exposed at the Abu Ghraib prison, all this is sanctioned by the US Administration, which claims it does not amount to torture. "That's what makes it so much worse," Barton says.

"We went to war on WMD, which is withdrawn now. And now the *casus belli* is to bring democracy and human rights — yet we, the coalition, are detaining people without trial, and we the coalition are using torture techniques," Barton says. "As a member of the coalition we have a responsibility. We, the Australians, should be telling our American colleagues: This is just not acceptable; if you want us as a member of the coalition, to continue our presence there, then we ask you to stop this practice.

"But of course this Government doesn't want to upset the Americans, so we won't do that."

Smoking gun in the Big Tobacco case

Marcus Priest

Australian Financial Review,
22 April 2006

Many have heard of Jeffrey Wigand, who was immortalised in the film *The Insider*. Yet the role of Australia's own whistleblower, Fred Gulson, was just as important in revealing the giant deceptions of international tobacco companies.

In a Washington DC courtroom in February last year, former HO Wills lawyer Fred Gulson came face to face with the attack dogs of Big Tobacco. With 17 highly paid American lawyers lined up beside him, British American

Tobacco's lawyer, David Wallace, aggressively tried to discredit Gulson, who claimed to have been a key player helping his former employer implement a document destruction policy. Wallace moved ever closer to Gulson in the witness box.

At one point during the day-long grilling, presiding judge Gladys Kessler was asked to restrain the lawyer.

"Objection, your honour, just to the point that Mr Wallace is continually getting up to Mr Gulson's face," US Department of Justice counsel Brett Spiegel said.

Kessler pulled BAT's lawyer into line: "That's correct. Mr Wallace, all the questions from the podium."

The cross-examination was the culmination of an extraordinary three-year ordeal for Gulson, in which Wallace engaged private investigator Control Risks Group to seek to discredit him — and therefore the evidence he would give in the landmark anti-racketeering case against the tobacco industry. They ended up with details of a dirty battle between Gulson and a former business partner in the early 1990s for control of a company.

Then Gulson received mysterious phone calls and text messages, and "real-estate agents" appeared unannounced without business cards at his Sydney home.

"No real-estate agent walks into a property without business cards," Gulson told the *Weekend AFR*. "And when they were challenged they just ran off."

At one point when he was testifying, the US government provided Gulson's family with 24-hour protection by security guards.

It was reminiscent of the experiences of another tobacco whistleblower, Jeffrey Wigand. Last year Wigand flew to Australia to pay tribute to Gulson at a Sydney health conference organised by anti-smoking campaigners.

But while Wigand's saga has been immortalised by Russell Crowe in the movie *The Insider*, Gulson has received a fraction of public attention. Yet Gulson seems ready made for celluloid. Those close to him describe a larger-than-life personality, overconfident and with opinions on any topic,

from wine to the genetic make-up of deer. ...

But he's deadly serious about his 13 months at BAT Australian subsidiary HO Wills.

Gulson was employed by BAT in 1989 as general counsel and company secretary. He says his chief responsibility was to prepare the company for an expected wave of tobacco litigation. This included implementing the company's "document retention" policy — created in 1985 and subsequently advised on by Australian law firm Clayton Utz.

One reason Gulson's evidence was so important was that he used none of the normal qualification or prevarication that is the stock in trade of the legal profession. Gulson's evidence about the real, unwritten reason for Big Tobacco's worldwide document retention policy pulled no punches: documents were destroyed, warehoused and routed through lawyers to keep them out of the hands of plaintiff lawyers.

Gulson says he became so concerned about the policy that he had it reviewed by a series of senior lawyers.

"It was a wolf in sheep's clothing," he told Kessler.

And in a written answer to the US court he said: "The document retention policy was a contrivance designed to eliminate potentially damaging documents while claiming an innocent 'housekeeping' intent.

"The policy didn't pass the smell test. The whole policy was to keep evidence out of the courts."

Gulson's evidence was supported in the same proceedings by tobacco heavyweight David Schechter, general counsel of BAT US subsidiary Brown & Williamson.

"One of the benefits of limiting such retention [of documents] was that documents would not fall into the hands of plaintiffs or the public or the newspapers," he said.

"The reason why I wanted to know whether it was legal in Australia to destroy documents when there was no litigation was so that we could do that and it would be legal, and the result would be to prevent the documents being used against the company in litigation."

Others from BAT have not supported Gulson's claims of sinister purpose. But Gulson's immediate superior, Nick Cannar, was more equivocal and in his evidence pleaded privilege against self-incrimination.

BAT refuses to comment on Gulson's claims until Kessler rules this year in the anti-racketeering case against global tobacco companies. If she finds against them, the evidence given by Gulson could prove just as important in the global fight against Big Tobacco as that of Wigand.

"Wigand gave evidence as to the scientific nature of nicotine and its addictive qualities and the knowledge inside tobacco companies, and Fred gave evidence as to the practical effects and real purpose of their document retention policies," says Melbourne barrister Jack Rush, QC, who appeared for Gulson during the Washington hearing.

"US Department of Justice lawyers saw Gulson as right up there with Wigand."

But unlike Wigand, Gulson says he anticipated everything BAT threw at him.

"I am a lawyer, I am used to that shit," Gulson said.

"In a sense, Wigand is a braver person because it took a lot more guts to do what he did. He did not know what was coming next, whereas nothing that happened to me was a surprise. It does not mean it was not disturbing but I would have been surprised if it did not happen. Those people are the masters of the dirty trick."

Gulson's starring role against Big Tobacco began in Australia back in 2002 after a finding that BAT had destroyed documents prompted him to come forward. Victorian Supreme Court judge Geoffrey Eames struck out a defence by BAT against a claim by dying Melbourne woman Rolah McCabe. Eames awarded McCabe \$700,000 on the grounds the destruction of potentially relevant documents by BAT rendered it impossible for the plaintiff to have a fair trial.

Eames quoted liberally from letters between Gulson and BAT's lawyers.

Gulson did not give evidence in the case, but following Eames's decision he was contacted by Freehills, the law firm acting for Clayton Utz partner

Brian Wilson who, according to Eames, advised BAT and Gulson on the document retention strategy. Freehills wanted Gulson's assistance in an appeal against Eames's decision. The Court of Appeal overturned Eames's ruling, including his criticisms of Wilson.

Gulson wrote back to Freehills saying he was not willing to help because his recollection of events corresponded with Eames's conclusion.

On learning of the Victorian Court of Appeal decision and seeing a correction published in this paper in relation to the matter, Gulson became so incensed that he contacted McCabe's lawyer, Peter Gordon.

Gulson says: "I knew we were stretching the four corners of the envelope and I formed the view that BAT's policy at the time was a legal contrivance. But I was comfortable that, providing I had the best legal brains in the country doing it, followed by the best legal brains in England, that it was fine.

"Reading Justice Eames's judgement I realised that despite everything I had put in place to prevent, it was still illegal."

Gordon was initially suspicious about the call from Gulson, but after a series of meetings he was convinced he was the real deal.

"I thought I was being set up. It seemed extraordinary to me and I made sure I had a colleague in the room when I returned his call because I thought he might have been a plant," Gordon says.

"I had seen his name in documents. I was amazed that someone who was so trenchantly on the other side would seek to make contact."

Since leaving Wills, Gulson has moved from the law into business and become one of the largest essential-oils suppliers in Australia. He was reluctant to become involved again, but statements by BAT that it would be seeking a costs order against McCabe's family finally changed his mind.

"He was fuming," says Cordato, who gave him legal representation when he went public.

"He was not happy when he was working at BAT as they were asking him to do things he was not happy doing ... but until something happened

to trigger a response from him those things were best left in the closet."

But when Gulson first gave evidence in the US — where he was given immunity from prosecution in the case — his lawyers were concerned that he might crack under pressure.

At a deposition to take his evidence in December 2004, before the Kessler hearing, he stormed out of the examination by lawyers after they refused to allow him to read an affidavit he was being questioned about.

Rush says: "We were extremely disappointed in him and we thought he was extremely nervous. I think the Yank lawyers thought they would mince him in front of the judge. But when he did appear in front of her he was much more in charge. The Yank lawyers didn't lay a glove on him."

Gulson insists that his performance at deposition was all a strategy to throw off the US lawyers: "I decided to assume a persona that was more extreme than my normal persona."

And it's not over yet. There are dramatic new legal claims in the wings in Australia and Gulson's evidence will play a critical part.

Environment laws may not blunt high court whistleblower ruling

Defense Environment Alert
Vol. 14, No. 12, 13 June 2006

The recent Supreme Court opinion rejecting First Amendment claims for public employees who act as whistleblowers combined with ongoing Bush administration efforts to eliminate special whistleblower protections contained in environmental statutes may discourage EPA staff from discussing misconduct with supervisors, observers say. They note that although many environmental statutes are designed to shield EPA employees from retaliation, those protections may be inadequate in light of the ongoing assaults.

One source points out that statutes such as the Clean Air Act and Clean Water Act provide, for now, broader employee rights to free speech when revealing wrongdoing to supervisors, but warns that unless the trend of eroding such protections is reversed,

"We will have to be reconciled to a bureaucracy of yes people."

The high court's 5-4 ruling in *Garcetti et al. v. Ceballos* May 30 marks the first decision the court has issued in a case it reconsidered following the retirement of Justice Sandra Day O'Connor. Her replacement, Justice Samuel Alito, sided with conservatives in reversing the long-held precedent that public employees enjoyed constitutional protections when speaking out as part of their job.

"We reject, however, the notion that the First Amendment shields from discipline the expressions employees make pursuant to their professional duties. Our precedents do not support the existence of a constitutional cause of action behind every statement a public employee makes in the course of doing his or her job," Justice Anthony Kennedy wrote for the majority. Relevant documents are available on InsideEPA.com.

The decision sparked outrage from public employee advocates, including the National Treasury Employees Union (NTEU), which represents many EPA employees.

NTEU had filed an amicus brief in the case, urging the justices to protect employee speech. "Again and again, public employees, armed with their specialized expertise and data or other insights resulting from their work, have served the public interest by exposing wrongdoing or waste of government funds and by presenting unpopular but objectively sound conclusions and opinions. ... This speech is entitled to constitutional protection."

NTEU argued against the "artificial distinction" made between "citizen speech" and "employee speech," but the high court endorsed such a distinction.

The court found, "Two inquiries guide interpretation of the constitutional protections accorded public employee speech. The first requires determining whether the employee spoke as a citizen on a matter of public concern. ... If the answer is no, the employee has no First Amendment cause of action based on the employer's reaction to the speech."

In a statement, NTEU said the decision would have a "chilling effect on the ability of public employees at

all levels of government to speak out on matters of public interest.” NTEU President Colleen Kelly added, “When the voices of dissenting scientists, doctors, lawyers, financial or law enforcement professionals serving the public are silenced, the American people will ultimately suffer.”

While employee advocates and legal experts acknowledge the opinion does not directly affect many EPA employees, it does remove employees’ ability to cite the First Amendment as a whistleblower defense should they claim they were retaliated against.

One legal expert says, “The decision takes away the First Amendment defense in any claim, regardless of other [protective] statutes.” Employees would be “stuck” with using other statutory remedies, which are also under attack by the Bush administration and the courts, the source notes.

A source with the National Whistleblower Center says the administration’s actions combined with the high court’s ruling illustrate a larger trend restricting public employees’ rights to blow the whistle.

For example, the Administrative Review Board (ARB) at the Department of Labor is considering a case, *Erickson v. EPA*, in which the Bush administration is seeking to remove the special whistleblower protections under the environmental statutes. EPA filed a brief last fall arguing that sovereign immunity prohibits federal employees from suing the government under environmental statutes. That brief follows an earlier ARB ruling finding that the environmental statutes’ whistleblower protections do not extend to state employees.

The Department of Justice (DOJ) filed an amicus brief in the *Garcetti* case urging the court to find against the employee, Richard Ceballos, who worked as a deputy district attorney in Los Angeles. While on duty, he wrote a memo to his supervisors questioning the validity of a search warrant. Ceballos was then demoted and transferred, though his employer denied those acts were retaliatory.

DOJ has also opposed legislation in the House and Senate that would clarify that employees covered by the Whistleblower Protection Act enjoy First Amendment protections for their official duties. The legislative effort is

seeking to respond to earlier court rulings that have limited employees’ speech.

A source with the Government Accountability Project, which advocates free speech rights for public employees, says that despite bipartisan passage of the bills by the relevant committees in the House and Senate the past two years, congressional leadership has not allowed the legislation to come to a floor vote due to DOJ opposition.

A source with Public Employees for Environmental Responsibility (PEER) adds that the environmental statute protections are already limited in terms of the employees they protect. For example, PEER is arguing in a case pending before the U.S. Court of Appeals for the 9th Circuit that the public employees of the Fish Passage Center — which conducts research on salmon recovery — have First Amendment protections to discuss the results of their findings.

A district court ruled in the case, *National Wildlife Federation et al. v. National Marine Fisheries Services et al.*, that the Bush administration had to increase water flows from hydroelectric dams to protect the salmon, in part based on the scientists’ findings. That prompted protests from Senator Larry Craig (Republication from Idaho), who last year successfully included language in an appropriations bill cutting funding for the Fish Passage Center. The 9th Circuit intervened and continued the funding while the case is pending.

The PEER source notes, “We have pending First Amendment litigation before the circuit, but we are seriously rethinking” our arguments in light of *Garcetti*.

PEER and other sources note that the ruling will likely prompt a host of litigation over what constitutes official duty, and may also persuade public employees to take their concerns directly to the media, rather than seeking to warn supervisors.

A Public Citizen attorney who litigated the case says the decision “creates a perverse incentive for employees to go public first with their information.” But the attorney adds that the employee could still suffer retaliation for such action.

Update: The Government Accountability Project reports: “The Senate acted quickly to plug a government accountability loophole created less than one month [earlier], when the Supreme Court’s *Garcetti v. Ceballos* decision canceled constitutional free speech rights for government workers carrying out their job duties. Senate bill S. 494, which includes that reform amidst a general overhaul of the Whistleblower Protection Act, was agreed to by unanimous consent as an amendment to the 2007 National Defense Authorization Act, passed 96-0.”

Tories challenge information chief’s powers

**He can protect civil-servant
whistleblowers from reprisal
by the government**

Carly Weeks

Vancouver Sun, 14 June 2006, p. A7

OTTAWA — The Conservative government has launched a new fight with Canada’s information commissioner by challenging his power to protect civil servants who testify during investigations from reprisal by the government.

The issue, which will be heard at Federal Court, could significantly undermine the authority of Information Commissioner John Reid, according to the commission’s annual report, which was tabled in Parliament on Tuesday.

The government is “challenging powers that the information commissioner has exercised for many years and, which even the litigious Chretien administration did not challenge,” says the report, which criticized government officials for failing to trust the Access to Information Act and withholding information from the public.

At issue is the fact that when civil servants are subpoenaed to appear during an information commission investigation, they are represented by government lawyers. By law, witnesses have the freedom to speak during investigations without their employer present, so the information commissioner can impose a confidentiality order that restricts government lawyers and their clients from

discussing the investigation with anyone.

In March, the Justice Department asked for a judicial review that challenges the information commission's power to keep proceedings confidential, a move that undermines the commission and the freedom of its witnesses, Reid said.

"If they win, it will alter the balance against the individual and reduce their right to speak openly to the information commissioner without fear of reprisal," Reid said in an interview.

Reid said his office has been sparring with the department over this issue ever since the fight to have public access to the prime minister's agenda began several years ago.

"This is an ongoing battle we've been having with the department," Reid said.

Ironically, protection for whistleblowers is being touted by the Conservatives as one of the most important provisions of the party's sweeping accountability bill, which was drafted in the wake of the Liberal sponsorship scandal.

The Federal Accountability Act would include protection and possibly cash rewards for civil servants who blow the whistle on wrongdoing in the federal government and is designed to "foster an environment in which employees may honestly and openly raise concerns without fear or threat of reprisal."

A spokesman for the Justice Department declined to comment on the issue.

Reid's annual report also criticizes the federal government for exerting "very real pressures" to keep information from Canadians and urges significant reform to change the culture of secrecy that exists within many departments.

The government regularly circumvents the access legislation by ignoring response deadlines to information requests, blacking out embarrassing parts, doing business orally and keeping institutions and records out of the act, according to the report. While some problems stem from deliberate attempts to withhold potentially embarrassing information and delay the release of information as a form of "damage control," Reid said part of the

problem is that many departments don't have the staff to adequately handle access requests.

Manitoba government won't protect whistleblowers who go to media or politicians

The Canadian Press, 15 June 2006

Manitoba Finance Minister Greg Selinger is refusing to extend whistleblower protection to civil servants who bring complaints forward to a legislature member or to the media.

The whistleblower bill that's currently before the legislature only protects government workers who report workplace misconduct to the provincial ombudsman.

Opposition critic Gerald Hawranik noted the woman whose firing ultimately prompted the bill would not have been protected by the legislation because she went to the labour minister, not the ombudsman.

But Selinger said allowing whistleblowers to go to the media or to a legislature member would mean that anyone accused of wrongdoing would be tarred and feathered before anyone could show whether the accusations had merit.

"By then it could be too late to repair the damage done to their reputation," said Selinger.

Hawranik introduced an amendment Monday that would have protected workers who take their complaints elsewhere, but it was defeated by the NDP majority.

Critics have also lashed out at the bill because it does not require the provincial ombudsman to reveal any wrongdoing he or she finds.

The federal whistleblower bill requires the ethics commissioner to issue a report within 60 days of finding any misdeeds. But the Manitoba bill says the ombudsman "may" issue detailed reports, but is not required to.

Former Workers' Compensation Board CEO Pat Jacobsen lost her job following complaints she made to the labour minister about the conduct of the board's directors in 2001. The minister turned her complaints over to

the board, which then called for her resignation.

Her complaints were ultimately found to have some merit in an investigation by the provincial auditor general, who also slammed the province for how it handled her situation.

Hawranik accused the government of wanting to keep legislature members out of the bill to prevent details from leaking out about wrongdoing at the Crocus Investment Fund.

The labour-sponsored fund was the subject of a damning report by the auditor general in May 2005 and is also the subject of an RCMP investigation.

Selinger said people can still complain to the media or to a politician if they want, but said extending protection to people who do would have opened up the process to political interference.

Tales from the back office — whistleblowers

The Economist, 25 March 2006

It is becoming easier for employees to reveal their bosses' wrongdoings

Sherron Watkins, a star witness in the current trial of Kenneth Lay and Jeffrey Skilling, respectively Enron's former chairman and chief executive, is billed as a whistleblower. "Probably the closest thing to a hero to emerge from the Enron saga," said the *Wall Street Journal*. Ms Watkins fits the public's image of what a whistleblower should be — female, feisty and ultimately vindicated, a stereotype laid down by Oscar-nominated actresses such as Julia Roberts (in *Erin Brockovich*) and Meryl Streep (in *Silkwood*), and reinforced when Ms Watkins was one of three female whistleblowers named as *Time* magazine's "Persons of the Year" in 2002.

In reality, the lives of most whistleblowers are far from glamorous. In *Whistleblowers: Broken Lives and Organisational Power*, Fred Alford, a professor at the University of Maryland, writes, "the average whistleblower of my experience is a 55-year-old nuclear engineer working behind the counter at Radio Shack.

Divorced and in debt to his lawyers, he lives in a two-room rented apartment.”

Ms Watkins, at first sight a rare exception, is arguably not even a whistleblower. She made no systematic attempt to reveal wrongdoing to internal or external authorities, the defining action of a whistleblower. Her qualms were instead laid out in an internal memo that she wrote to her boss, Mr Lay, expressing a fear that the company might “implode in a wave of accounting scandals.” The memo was uncovered by an investigative committee after the company had collapsed.

Other Enron employees fit the whistleblower description rather better. In *Confessions of an Enron Executive* by Lynn Brewer, published in 2004, the author says that many of her colleagues tried to alert authorities to what was going on, including Margaret Ceconi, who blew the whistle anonymously to the Securities and Exchange Commission (SEC) in July 2001 and then publicly to members of the board in August that year. In the Houston court this month, Mr Lay’s lawyer described Ms Ceconi as “a nutcake.”

It is common for organisations to retaliate against whistleblowers by questioning their sanity. The strategy, known as “nuts and sluts,” is to cast doubt on the message by casting doubt on the messenger. National Fuel Gas Company, a utility based near Buffalo in New York state, sacked Curtis Lee, a highly paid company lawyer, after he alleged that the chief executive and president had ordered him to backdate their stock options on forms submitted to the SEC in a way that made the options worth considerably more. Not only did National Fuel then sue Mr Lee (successfully) for the return of the documents that might have provided proof, but it also persuaded a local court to ban him from ever repeating the accusations. In addition, the court ruled that he undergo psychiatric treatment, a ruling that was subsequently reversed on appeal on the grounds that it was illegal, but not before Mr Lee had been “treated.” An official investigation into the matter was frustrated by the untimely death of the chairman of the company’s compensation committee.

In general, American companies do not have to give employees a reason for sacking them. Some whistleblowers believe that the greatest single protection they could gain would be for it to be mandatory for firms to say why they are getting rid of an employee. Short of that, legislation is rolled out regularly with the aim of providing whistleblowers with more protection. America has had a Whistleblower Protection Act in force since 1989, and after the Enron and WorldCom disasters the Sarbanes-Oxley act added further protections to corporate whistleblowers. In particular, it ruled that all companies quoted on an American stock exchange must set up a hotline enabling whistleblowers to report anonymously.

Earlier this month another bill was introduced into the Senate designed to “improve whistleblower protections” by giving federal employees the same rights to reinstatement and damages as private-sector employees received under Sarbanes-Oxley. In particular, a whistleblower who can prove that he was unjustly sacked will be reinstated and awarded damages.

In most of Europe the legal protection given to whistleblowers is weaker than in America. In June last year, the French Data Protection Authority refused to allow the setting up of anonymous whistleblower hotlines, saying that such lines were “disproportionate to the objectives sought with the risks of slanderous denunciations.” Companies, however, have discovered an ingenious compromise: they can set up their hotlines outside France. Meanwhile, a German court has ruled that the parts of an employee code of conduct that invited employees to report misconduct to a whistleblower hotline breached German labour laws.

After reviewing hundreds of laws protecting whistleblowers, Terance Miethe, a professor of criminal justice at the University of Nevada, concluded in 1999 that “most legal protection for whistleblowers is illusory; few whistleblowers are protected from retaliatory actions because of numerous loopholes and special conditions of these laws, and the major disadvantage that individual plaintiffs have against corporate defendants.” Little has happened since to change that view —

one which should give all potential whistleblowers pause.

Yet just occasionally a whistleblower triumphs against the odds. Jonathan Fishbein, a doctor who was fired by America’s National Institutes of Health after reporting misconduct in federal research into viraquine, an AIDS drug, was reinstated in December last year after concerted support from politicians, the media and fellow scientists. Charles Grassley, chairman of the Senate Finance Committee and a supporter of whistleblowers, said it was an example where “we can chalk one up for the good guys.” More broadly, technology may be helping the whistleblower’s cause. Blogs and e-mails make it easier to raise the suspicions of regulators and to steer their enquiries.

Finally, company structures are changing, becoming more open and, via the large number of alliances and joint ventures that corporations have with each other, more open-ended. Mr Alford says gloomily that “organisations are the enemy of individual morality.” But the organisation of the future may have fewer dark corners in which to hide the wrongdoings that whistleblowers attempt to bring to light. With luck, that could result in fewer broken lives.

The ones who got away

Maria Bartiromo

BusinessWeek, 12 June 2006

If the Enron saga has a truth teller, it’s Sherron Watkins, the whistleblowing executive who at least tried to do the right thing. Watkins hasn’t been shy about speaking to the media or going on the lecture circuit. But her candor here may surprise you.

Who got away? Who hasn’t paid the piper?

Certainly there are some Enron execs, but definitely the banks. Enron could not have done it without all of the lending from the banks. The big deals were with CIBC [Canadian Imperial Bank of Commerce], Citigroup, and JPMorgan. [They] routinely lent to Enron because [CFO Andrew] Fastow was promising them investment banking deals. [The banks] paid giant fines ... but the individuals who

worked at the banks still made their bonuses and have their houses in the Hamptons. Then there's [Enron law firm] Vinson & Elkins. They are terminal. They have had rainmaker lawyers leave. They just had a slew of eight-year associates leave. You can't do the compromised level of work that they and [Arthur] Andersen did and think you'll be around in a decade.

What was your reaction to the guilty verdicts for Ken Lay and Jeff Skilling?

A sense of closure that finally the Enron scandal is over, but there is some sadness, too. Not only for Enron being gone and lives being wrecked but also because these two guys don't seem to get it. Ironically, that was always Skilling's line: People didn't understand Enron's business, they just weren't smart enough to get it. Ken Lay's performance on the stand was angry and disdainful of the government. He performed more like Saddam Hussein. After the guilty verdicts were read, Skilling marched out with the "I'm innocent, and I'm going to fight this" [attitude]. But Lay wasn't even ready to post bond. It is just so shocking that he was so convinced of his innocence.

What happened when you first went to Lay? Why did you do it?

I had stumbled across this fraud when I made a job move in the summer of 2001, and I knew that it couldn't be appropriate accounting. So I was trying to leave the company, but within two weeks ... Skilling left, and I thought: "Wow this is big ... he has been in this job eight months, and now he is leaving." I figured Ken Lay didn't know and if I just told him, maybe there was a chance to come out of this. Here I am telling the guy who was CEO when some of these transactions were hatched: "Hey, these things happened on your watch." It's almost like saying to someone: "I just found out you have been beating your wife. You have to stop." When I think about it, it was really stupid.

A lot of people felt Lay had some distance from the fraud. Is it even conceivable to believe he was innocent?

It is a little bit like the emperor's new clothes in that he wasn't paying attention. Skilling and Fastow were the swindlers, and Lay was the emperor. I

don't think [Lay] was involved in creating the fraud yet he lied about it at a critical time.

You have said you are unemployable. What do you mean?

I couldn't get a normal corporate job. There are plenty of people who give me a bear hug, but plenty of others give me that odd handshake. I don't want to come off as a "poor me." I am moving in circles I would have never imagined. Enron became the word for scandal, and the media had all of their villains, and they wanted a hero. So it was fortunate for me. Being the *Time* Person of the Year is about as hero status as you can get, I guess. There is nothing about my life that I regret, but this has been the most bizarre thing that could have ever happened.

Some people have criticized you because you sold stock knowing there was something wrong. But the rest of the world didn't know. Was that insider trading?

I sold \$30,000 worth of stock in August [2001] and some options in late September. I was panicked by 9/11 ... and about the company. I sold the last block and netted about \$17,000. Yes, I had more information than the people buying at the time. Could [the government] have come after me with insider trading charges? Sure, they probably could have.

What's your advice to others who see fraud?

Look out for yourself. I counsel people that you need to find the safety net of another job and leave before you say anything. Also, don't ever do it alone. Then you can't be dismissed as one lone voice. But be ready to lose your job.

Whistleblowing and the police

Roberta Ann Johnson

This is an abbreviated version of an article published in the *Rutgers University Journal of Law and Urban Policy* in 2005. The full version, including references, is available at <http://www.uow.edu.au/arts/sts/bmartin/dissent/documents/Johnson.pdf>

Although there are many whistleblowers in the United States, some of whom are publicly praised, whistleblowing is not an easy endeavor. There are almost always dire consequences to whistleblowers, to their careers, and to their personal lives as a result of their actions. Some organizations make whistleblowing very difficult, and therefore, less probable. The police department is one of these organizations. I argue that the character of the police department not only makes whistleblowing less likely to occur, it ironically makes it even more necessary. In addition, resistance from police departments and their retaliation against whistleblowers costs them and the public dearly.

Public office, private gain

Without doubt, the most publicized example of systemic police bribery is the New York police department in the 1960s and early 1970s. Plainclothes officer Frank Serpico, the most famous police whistleblower, alerted the public to the bribery. He exposed the practice of police officers using their positions to extract money and gifts. The story emphasizing his courage was popularized in the 1973 Hollywood film *Serpico*, starring Al Pacino.

New York Police Detective Third Grade Frank Serpico was unique, according to his biographer Peter Maas. "He was the first officer in the history of the Police Department who not only reported corruption in its ranks, but voluntarily, on his own, stepped forward to testify about it in court."

Serpico's personal experience with the widespread police practice of using public office for private gain began when he received an unmarked envelope with \$300 in it from another

officer. "It's from Jewish Max," the officer said, referring to a well-known gambler in the neighborhood. Serpico brought the envelope to Captain Philip Foran, who was connected to the Department's Chief Inspector's Investigating Unit. To Serpico's surprise, Foran warned him that if he went to the Commissioner, it would go to a grand jury, word would leak out and "By the time it's all over," he said, they'll find you face down in the East River."

Even without using the envelope with its damning contents as evidence, Serpico was able to provide information about rampant police corruption to a grand jury. But the grand jury did not reach beyond the street police to cast blame upon their supervisors, captains, lieutenants and the Chief for either being involved or for ignoring what was happening around them. Frank Serpico eventually took his story to reporter David Burnham of *The New York Times* with fellow whistleblower David Durk and two other officers. The meeting took place over two years after Serpico first brought the unmarked envelope to Captain Foran. The systemic nature of the police corruption still had not been addressed. The press changed that.

Starting on April 25, 1970, and for weeks afterwards, the police corruption story made New York front page news and ignited action by Mayor John Lindsay as well as by the NYPD. The scandal shook the city. The newspapers told of "gambling bosses, pimps, drug dealers and business people systematically paying officers and supervisors for protection or favors, and of the police and City Hall brass failing to act on ... evidence."

New York was by no means unique in its experience of systemic corruption. Around the time this scandal was breaking, 30 police officers in New Orleans were charged with bribery and conspiracy to protect organized gambling and vice; in Seattle, 100 officers, including the assistant chief of police, were involved in a shakedown system; and in Boston, Washington D.C., and Chicago, a nationally funded study revealed that one out of every five officers "was observed in a criminal violation *even though they knew they were being watched.*" In addition, Atlanta, Baltimore, San

Francisco, Philadelphia, Newark, Louisville, Reno, Kansas City, Detroit, Reading, and Albany also experienced police department corruption scandals.

Although there have been officers in other cities who have testified about corrupt police practices, Frank Serpico's name has become synonymous with whistleblowing. The corrupt practice he confronted was bribery. It was pervasive in pattern and practice and was a problem that was system-wide. It took a prestigious investigative commission (the Knapp Commission), a cooperative mayor's office, and daily exposure of the problem on the front pages of *The New York Times* to break the pattern of wrongdoing and indifference.

Excessive force

Another serious abuse of police power is excessive use of force. Appropriate use of force can, in many cases, be very difficult to discern, especially since the line that separates brave from brutal is thin. "In the police world, the bravest are often the most brutal" and they are the ones most admired by other police officers.

Many surveys of police departments across the country reveal that there is a problem with the amount of force that some officers use. In May 2000, the National Institute of Justice, an agency in the U.S. Department of Justice, published research findings related to the use of force. The report "Police Attitudes Toward Abuse of Authority: Findings from a National Study," was based on a survey of 925 randomly selected American police officers in 121 departments.

The survey revealed that nearly 22 percent of police respondents reported that officers in their departments (sometimes, often, or always) were using more force than necessary. The report also referred to an Illinois study that found that 20 percent of police officers said they observed police using considerably more force than necessary, and an Ohio study that found that 13 percent of police officers reported that they had observed police using considerably more force than necessary.

Treatment of minorities

A third kind of misuse of power by police relates to the differential treat-

ment of citizens. The same National Institute of Justice report found a wide difference of opinion on how equally citizens are treated. When surveyed, the police said that unequal treatment was a problem that depended on race. As to whether police officers were more likely to use physical force against blacks and other minorities than they used against whites in similar situations, 5.1 percent of white officers believed there was such unequal treatment; 57.1 percent of black officers believed there was unequal treatment; and 12.4 percent of other minority officers believed there was such unequal treatment. On occasion, minority police officers have come forward as whistleblowers, sometimes in groups, to expose differential police treatment to journalists eager to inform the public. However, most of the time, police respect the code of silence.

Addressing the problem

Policing is characterized by its autonomy and a lack of supervision. Therefore, supervision and oversight would not be a realistic and reliable solution to the problem of police abuse. Supervisors generally cannot see the abuse and, therefore, they cannot correct abuse. Usually, fellow officers are the only witnesses present. As such, the responsibility should fall on the officer witness' shoulders to come forward to report the wrongdoing. But the character of police departments prevents this from happening, because police officers are highly dependent on and loyal to their peers. Officers are expected to remain silent.

Even those troubled by what they see remain silent. Although 80 percent of officers surveyed said that they did not accept the "code of silence," 61 percent said that police officers "do not always report even serious violations by fellow officers." The National Institute of Justice Research suggests that the "culture of silence ... continually plague[s] the reform of American policing." Indeed, of those surveyed, 24.9 percent thought whistleblowing was not worth it; 67.4 percent said whistleblowers were likely to be "given a cold shoulder;" and 52.3 percent did not think it unusual for police officers to "turn a blind eye."

Retaliation

Penalties for whistleblowers can be harsh. As Bouza describes it, “the full force of the agency, formal and informal, is brought to bear on the ‘snitcher’” “Rats are scorned, shunned, excluded, condemned, harassed, and almost invariably, cast out. No back-up for them. They literally find cheese in their lockers.” Case after case offers evidence of harsh retaliation.

For example, in 1998, in Washington, D.C., five police whistleblowers testified at a special Council Committee hearing investigating alleged police misconduct regarding the retaliation they experienced after exposing illegal and improper action. The police officers “who complain about supervisors or publicly criticize departments,” *The Washington Post* reported, “end up on a ‘hit list’ that can result in unwanted transfers, a dock in pay, unfavorable assignments and other retaliatory measures.” Evidence that supports the fact that police assignments were affected by whistleblowing is that the 7th police district in southeast Washington is known as the “dumping ground” for “problem officers.”

In the early 1990s, in New York City, the mayor convened the Mollen Commission to investigate police corruption. After cooperating with the Commission, police detective Jeffrey Baird, an Internal Affairs investigator with NYPD, experienced a range of retaliation. For example, he was sent obscene materials to his house, his workstation was vandalized, he was denied promotion, and he received threats to his life.

In Pomona, California, in 1995, police officer Jed Arno Blair alleged that other officers stole money and planted drugs on suspects. His allegations eventually led to the firing of three officers. (Two were reinstated.) Blair himself suffered retaliation for coming forward. He specifically described his colleagues stealing his equipment, interfering with his radio calls, threatening to kill him and his family, and scrawling the word “rat” on his locker. He said “his locker was spat in and wired shut with a coat hanger ... his shirts were dumped in a urinal and soda was poured into his patrol car.” Blair’s “complaints were

ignored and he was transferred to the very task force he exposed.” “The day the three officers were dismissed,” his wife, he said, “got a phone call warning that her husband might come home with broken legs” and that they wanted to get rid of the whole family.

Also in California, in August 2000, more than 40 current and former Los Angeles police officers filed a class-action lawsuit alleging that they had been retaliated against because they had reported police wrongdoing. The officers believed they were victims of retaliation for “reporting incidence of excessive force, hostile work environment issues and other forms of police misconduct.” The retaliation included “personnel complaints, undesirable job assignments, demotions and terminations.” Many said they were forced out of the police department “because they reported police abuses to their supervisors.” The attorney representing the police officers suggested that “these good cops fear their own administration and management more than the criminals on the street.” He said that managers “secretly passed along confidential information about a whistle-blower’s background to other managers to perpetuate the harassment of the employee. The practice was known as a ‘phone jacket.’”

The costs

The police practice of informally or officially punishing whistleblowers has a great negative impact upon society. It impacts the police because their unwillingness to support whistleblowers means they lose their best source of information on corrupt practices. Fellow police officers, as we have seen, are usually the only witnesses to wrongful behavior. Discouraging them from acting responsibly and from coming forward promotes wrongdoing and further supports the wrongdoers.

Society at large also pays a price for police whistleblower retaliation. Although wrongful behavior is not the norm in policing, nevertheless, the department pattern of ignoring the message of dangerous and illegal police practice and punishing the messenger who reports it increases danger to the larger community. It leaves the wrongdoers unchanged and unchecked. This has serious implications when we are asked to trust the

police to protect our safety and to preserve our rights and our property.

In the fall of 2000, 70 police officers in the Los Angeles Rampart Division were under investigation by federal and state prosecutors for serious wrongdoing. They were accused of police misconduct “ranging from planting evidence to shooting unarmed innocent people.” But only a handful could be charged because the officers who knew of the dangerous activities were not coming forward. What was the most serious cost to the community? The bad apples continued policing unscathed.

There is an additional social cost. The pattern of retaliation encourages police officers who have been whistleblowers and have experienced retaliation to use the courts to collect compensation for the harm it has done to them. This is not an argument against such settlements. Many whistleblowers should be compensated. They have had their lives ruined and their careers destroyed all because they were public servants who acted responsibly.

In sum, the cost of retaliation against police whistleblowers is extraordinarily high and we all pay the price. The police departments themselves pay heavily. The threat of retaliation against whistleblowers has a chilling effect. The threat prevents officers from coming forward to expose corrupt and abusive practices and it prevents serious wrongdoing from being addressed in-house. Because police officers’ concerns are silenced and not addressed by the departments themselves, when corruption is finally exposed, it is by outsiders – an investigative commission, a grand-jury inquiry or a citizen complainant. For cities and towns across the country, when police officers who come forward to expose wrongdoing are silenced, it allows the corrupt practices to continue on our streets.

Roberta Ann Johnson works in the Department of Politics, University of San Francisco and is author of the book *Whistleblowing: When It Works — and Why*.

Letters and articles

Whistleblowers of the Year 2005

On behalf of the Whistleblowers Action Group Queensland Inc, I advise that the Annual General Meeting of the Group selected Dr Con Aroney and Nurse Toni Hoffman joint recipients of the 2005 Whistleblower of the Year. The other annual award, for Whistleblower Supporter of the Year, has been given to the Bundaberg Hospital Patients Support Group.

The award citations carried the following commendations from the Group.

Dr Con Aroney and Nurse Toni Hoffman

The Award has been given jointly for the leadership shown by these medical professionals in disclosing to the public of Queensland the disastrous state of Queensland Health.

Dr Con Aroney made disclosures about persons dying while on waiting lists for life saving surgery. He also exposed the practices of bureaucrats using rational economic theory to make decisions, countermanding doctors, on the specific medical treatment that patients were to receive. For these disclosures, the Qld Health system that protected Dr Patel effectively excluded Dr Aroney from service in his specialty. The continuing treatment of Dr Aroney, as with the treatment of nurse Wendy Erglis (Whistleblower of the Year in 2003) is the indicator for all as to whether Qld Health, now exposed, is genuinely repentant for the grievous harm that it has brought to the people of Queensland.

Toni Hoffman exemplified how the responsibilities of medical supervisors should be carried out. Having received disclosures from her nursing colleagues, Toni Hoffman did not leave the investigation of mistreatment of patients to the dead-end processes of a rogue administration. Toni Hoffman ensured that the very serious disclosures from her staff reached forums that would cause a proper response to the dangers present. Toni Hoffman did not act just to protect her professional position or just her patients — Toni Hoffman acted in the interests of the public and in the public interest.

Bundaberg Hospital Patients Support Group

The Award has been given for the success of this group of members of the public to ensure that the disclosures of staff and patients at Bundaberg did not dissipate within the forest of the law. For the limited value that emerged from the Davies Inquiry, it was still a necessary first step to the reform of Qld Health. It was a first step that would have been stopped, but for the efforts of the Bundaberg Hospital Patients Support Group.

The Group, with its two awards, has sought to recognise both the integrity and the courage of whistleblowers, and also the contribution of persons whose actions have been of outstanding assistance to improving the circumstances for whistleblowers in this State.

This is the thirteenth year that the Group has made its awards to deserving persons.

Letter from Tony Grosser

I, Tony Douglas Grosser, ask for justice and for your help to try to fix the Police Complaints Authority (PCA) of South Australia.

I lodged over 40 complaints with the PCA from 1991-1994 concerning allegations of SA police corruption, murder, drug dealing, etc. They covered up these matters. On most occasions they had SA police investigating SA police — mates investigating their mates.

The investigating police even told the police I had complained about, "Do not worry. Nothing is going to happen on this lot." I discovered this in documents at my subpoena to police in my retrial. The SA police had the result of the investigation worked out in their favour before they investigated the allegations.

I was warning SA police of a coming bomb for locking up Italian mafia head Bruno "The Fox" Romeo, based on information given to me from Romeo's right hand man, Gregory John Cassidy ("Cass"), an outlaw bikie

and mafia associate. All SA police did was to tell Cassidy and Cassidy's associate John Lazdins on 28 June 1993 that I was the bomb informer, as transcript pages 11250-11254 prove. These pages are a record of my cross-examination of Peter Dickson of the SA police in my 2001-2002 retrial and can be provided.

Stephen Westmacott of the PCA telephoned John Lazdins on 31 August 1993 and told Lazdins that I was the informer on this bomb-to-come lot. Westmacott admitted this in his cross-examination by myself at my 2001-2002 retrial.

So the police deliberately gave me up to mafia criminals with criminal records and the PCA gave me up as the informer to the same criminals on 31 August 1993. Of course the criminals said there was no bomb coming to police in SA. Lazdins told Westmacott, "Grosser is so full of shit it is not funny," as Westmacott recorded on a document dated 31 August 1993, that I now have.

Then on 2 March 1994 came the National Crime Authority (NCA) terrorist-type bomb murder of Geoffrey Bowen.

SA "anti-corruption" cop Peter Cooling was the one who told CIB cop Peter Dickson to tell Cass I was the bomb-to-come informer. Anti-corruption SA police are supposed to solve corruption, not create death threats and possible murder of a police informer on serious topics. The trouble was I was putting in corrupt SA police for mafia activity with the criminals, so SA police tried to get rid of me.

On 3 May 1994, Star Force police did a raid on me, trying to murder me, as I knew too much. Another cover-up by SA police was put in place.

Then SA police kept the 31 July 1993 Channel 7 TV document from the NCA bomb inquest in 2000 (I obtained it by subpoena 2001-2002). This document clearly shows SA police failings or criminal activity by not stopping the then coming bomb. SA police only wanted to blame Domenic Perre over the NCA bomb, as I wrote to the coroner prior to the NCA bomb inquest.

I enclose Star Force officer Mark

Penfold Walter Roberts' 1994 psychiatrist's report where he admits police shot at the police and that this was the closest he got to being shot — by his own police, in my so-called siege, on 3 May 1994, eight weeks after the NCA Adelaide bomb murder of anti-mafia cop Geoff Brown.

My retrial miscarried as SA police told the court lies. The PCA has covered up all I write about and more.

If you think these things do not happen, please read the recently published book by a police informant to the NSW Royal Commission into police corruption, titled *Sympathy for the Devil: Confessions of a Corrupt Police Officer*, by Sean Padraic as told by Trevor Haken.

Thank you for reading my concerns. The independent politician John Hatton spoke out about these things in NSW. It took great courage to expose the truth as he did, but it led to the truth being acknowledged and the necessary changes taking place. It is time for similar things to happen here in SA.

Tony Grosser's troubles started in 1991 when he responded in good faith to Operation Hygiene in which the SA police commissioner asked members of the public to supply any information they had on police corruption. With family connections to the mafia, Tony supplied information that potentially was seriously damaging to police involved. The persecution that followed should be a warning to anyone thinking of reporting serious police corruption to the police. Tony has been in prison since 1994. He can be contacted at PO Box 6, Pt. Augusta SA 5700. This is an edited version of his letter of 24 April to Whistleblowers Australia.

Whistleblowers say no to the Ombudsman's office

Joint press release of Whistleblowers Australia and the Whistleblowers Action Group, April 2006

Whistleblowers throughout Australia oppose any transfer of the responsibility for the protection of Queensland whistleblowers to the Office of the Ombudsman.

This transfer was the submission made to the Dr Death Inquiry [Bunda-

berg Hospital] carried out by the Hon Geoffrey Davies AO completed late last year

“Sending whistleblowers to that Office would be like sending patients to Patel - the statistics would be worse,” says solicitor Gordon Harris, President of the Whistleblowers Action Group (WAG).

Jean Lennane, President of Whistleblowers Australia (WBA), is equally direct:

Commissioner Davies gave five deficiencies that caused the problems in Queensland Health. The fifth deficiency was the culture of concealment in government. This fifth deficiency was the cause Davies attributed to the reprisals that he found had occurred in that arm of the public service. It is the watchdog authorities like the Office of the Ombudsman and the Crime and Misconduct Commission (CMC) who must accept responsibility for the fifth deficiency.

Whistleblowers have been wary of the Office of Ombudsman in Queensland since 1997. In that year the office wrote in its annual report that it thought that disclosures of mistreatment of public servants were whistleblowing only in a technical sense, not intended by the Whistleblower's Protection Act

The “Post Office” investigative practices used by the Ombudsman's Office, in forwarding to chief executives the disclosures made about the activities of those chief executives and their senior executives, have been highlighted in other government inquiries. These failures have led to allegations that this watchdog office has been *captured* by the public authorities that the office was meant to oversee

Whistleblowers have been especially frustrated by the refusal by the Ombudsman's office to refer suspected official misconduct to the CMC (previously the CJC). This alleged breach of the Criminal Justice Act by the Office of the Ombudsman is at the heart of all concerns that the office is now the lynchpin of the government's new strategy for maintaining the fifth

deficiency in force, despite the findings of Commissioner Davies.

The Ombudsman recommended to Davies that a “new” system be established where public interest disclosures of maladministration would be required to go to the Ombudsman's office, while disclosures of official misconduct would go to the CMC.

This *dual watchdog net* sounds reasonable, and the lawyer, Commissioner Davies, recommended this approach. Whistleblowers, however, believe that Davies' Paragraph 6.510 has sold out whistleblowers, consigning them and their disclosures to the control of a partnership with the CMC that will ensconce the culture of concealment within the government rather than mitigate it. The “net” is really a “Catch 22,” whistleblowers hold.

Project Rainbow demonstrated the traps involved in the dual watchdog net idea.

Rainbow was the code name given to a Senate whistleblower from Queensland who had taken legal action against the Queensland government. The Queensland government allegedly withheld documents from discovery, and disposed of other documents both after and before litigation was afoot, in circumstances very similar to the Heiner affair [involving government shredding of documents relevant to a legal action]. This document will use the same codeword, Rainbow, to refer to the whistleblower.

The CJC found no suspected official misconduct in the government's action regarding the treatment of Rainbow, and refused to investigate what would have been another Heiner-type affair (at least with respect to the destruction/disposal of documents wanted for court proceedings). The CJC suggested that the matters may be maladministration and of interest to the Ombudsman's office

The Ombudsman's office found that the maladministration was associated with allegations of official misconduct, and refused to investigate that maladministration. The office also refused to refer the matters to the CJC/CMC.

The dual watchdog idea then did not act to “catch” an investigation of the disclosures. It acted instead as a “Catch 22” for any investigation, so

that no investigation occurred. Both the Ombudsman's office and the CMC knew of each other's refusal to investigate.

This is a principal demonstration of how the fifth deficiency would thrive in the CMC-Ombudsman's dual watchdog net.

Project Rainbow was a \$50,000 study on the methods and risks of terminating Rainbow's public service employment because of the "provocative" court action Rainbow had taken. Rainbow was sent to an alleged "gulag" and [employment was] terminated. The "provocative" court action was taken at the recommendation of the Senate Select Committee that was inquiring into whistleblower cases in Queensland in 1995.

The report on Project Rainbow was only released after the Information Commission was removed from the control of the Office of Ombudsman. This was 8 years after Project Rainbow was undertaken, and repeats the alleged breaches of Regulation 99 that occurred in the Heiner affair.

The Heiner affair remains the cause of continuing efforts by Government in Queensland to maintain the fifth deficiency. That is why whistleblowers nationwide have made the destruction of the Heiner documents a Case of National Significance.

The government does not view the culture of concealment identified by Commissioner Davies as a deficiency at all, for the culture still holds back investigation of the alleged rape of girls at John Oxley Youth Centre, and the culture worked against Rainbow.

But it would not have worked as well against Rainbow without the Catch 22 watchdog operation now being put by the Ombudsman's office as the key to a better Queensland.

How a whistleblower can't get maladministration corrected

Muriel V Dekker

I am a whistleblower recording my experiences about trying to get maladministration corrected in respect

to the Ombudsman's office, Freedom of Information and Workers Compensation. I played a small part as a catalyst for a degree of change at the WC office as a result of my submission to the Electoral and Administrative Review Commission (EARC). Part of my submission was published in EARC's Report, stating that "the lack of appeal from the Medical Tribunals of the WC office is a lack of a basic human right." Medical tribunals have usurped the people's right to courts of the land. Tribunals mainly lack legal protections built up over centuries of law.

In EARC's Report, Dr Morley also engaged in debate with the WC office manager about the Medical Tribunal's anomalies. Subsequently the Queensland Government set up Q-Comp to oversee the WC office. Q-Comp has the ability to overturn a wrong decision by a Medical Tribunal. But, injured workers complain, the WC office can then insist that the applicant must go before another Medical Tribunal.

When I blew the whistle about bad work conditions affecting my health, part of the denigration used against me was to stigmatise me in respect to my mental health — not a new issue to whistleblowers. The *Courier Mail* published my letter to the editor about being stigmatised by the unfair and damaging label of "personality defective." But I was never labelled thus until I was injured working and asked for my deserved compensation, and the employer withheld the real facts about the work I did and reports about my work injury. Other articles about statements I made also appeared in the *Courier Mail* and the *Gold Coast Bulletin*.

I spoke with officers at the United Nations when in Switzerland. Uninvited, I only gained entry when stopped by the guards at the big iron gate, because one officer looked at my grassroots report about "Anomalies in workers compensation," carried all the way from Australia, and phoned through to get me an appointment forthwith. The UN officers told me that they were aware of the lack of human right of appeal from the WC office Medical Tribunals and had contacted Australia about this anomaly, but "Australia refused to

ratify rights of appeal for everyone and that is a lack of basic human rights," a UN officer said. I promised to do all I could about this anomaly when I returned to Australia.

One of the avenues that I appealed to for correction of the maladministration was the Ombudsman. The article "Sham reviews" by John Wright (*The Whistle*, May 2006) indicates, in effect, what I was up against. I was shocked to discover that it did not seem to be mandatory to give particulars when responding to my later queries; apply proper procedure and rules of evidence; cross-examine hostile witnesses; or allow me to be present at hearings about my own case review. Many readers probably would not expect the same sham reviews to be taking place in an Ombudsman's office. But consider that Terry Gygar MP, then in Parliament, took my documentary evidence, that clearly reveals the maladministration, three times to the Ombudsman, but still this office refused to ask for correction of maladministration or report it to Parliament as the Ombudsman Act requires. This seems to indicate maladministration by the Ombudsman's office, or even protection of others in wrongdoing, I feel.

Subsequently I did manage to get the Ombudsman to perform further reviews. But the rigour of these reviews is questionable. You would have to wonder at a letter found under Freedom of Information, from the Ombudsman's office asking the institution I complained about to investigate itself for the Ombudsman. As a result of this strange action by the Ombudsman, others at work, also injured by the work chemicals, denied their own injuries and denied my reports about adverse work effects. They were probably concerned for their jobs. In respect to the allegedly false statements by these witnesses, if I had the legal protection only available in courts, they would have been declared hostile witnesses and cross-examined to get the truth. But the Ombudsman's office told me "It's only going to be who we believe." Whereas what the Ombudsman's office should have said is what the Ombudsman from another state, George Brouwer, said: "We put our foot down and let them know in no uncertain terms it is

our job to get to the bottom of complaints" ("Protection call for informers," *The Whistle*, May 2006).

Another FOI-obtained document shows that on another occasion the Ombudsman's office thanked the university where I had worked for "the nice lunch." Was there wine with the lunch? Is that how the Ombudsman officer missed seeing the obvious maladministration that is in my work file? Further the Ombudsman officer was supposed to stay independent and rigorously investigate my work file and to be thorough, cross reference it with what the WC office was given by the university. Instead there was nice lunch. Terry Gygar told me that he would table the documents in Parliament showing that the Ombudsman's office had documents revealing maladministration but was not performing its job of asking for correction of maladministration and was not informing Parliament. Unfortunately, he lost his seat in a by-election before performing this duty in the public interest.

Today the Ombudsman's office still will not answer with particulars but only writes that nothing more has to be done for me "because there have been reviews." When I point out that two Ombudsmen are on the record as saying that my case has not been treated properly, the ignore-it card is played. The late Heinz Leymann wrote and spoke at meetings about this issue. Professor Leymann said that it is happening worldwide: that the authorities let people complain about an issue and let them go down all the avenues to appeal but in the end do not give them a substantive outcome. "People all around the world are beginning to stand up about this issue," Professor Leymann said at an international conference about bullying of professionals, held at St John's College, University of Queensland, in the late 1990s. I spoke about my experiences at this conference.

Significantly, in my case the first Ombudsman, Sir David Longland, overturned his first letter saying that there is no maladministration. This happened when I managed to get documents past his officers to him showing that the documentary evidence clearly reveals maladministration. Then in his second letter Sir

Longland wrote that my medical and work evidence shows that there is a work or work-aggravated injury and there should be redress. Sir Longland left his position in 1979 and, I feel, that he would have expected that the Ombudsman's office would report the maladministration to Parliament. This has not happened says today's Minister, the Honourable Tom Barton MP. This is indeed concerning because one of the reasons the Ombudsman's office became necessary was, I understand, the failure of public servants to properly inform ministers.

After the Freedom of Information Act was legislated, eternal hope and belief in justice rose high again in my breast. Hope continued to bloom when one of the lesser matters was corrected. After this minor success, about four main maladministration matters remained to be corrected. But now the struggle continued to try to get this other maladministration corrected.

Under the FOI Act, I asked the WC office to correct its maladministration of not obtaining correctly all the facts about work I performed. Although this is also maladministration by the university, it is the job of the WC office to ensure it not only obtains the evidence but also to ensure that it is correct, a Supreme Court book shows. The safeguard of the Statutory Claims Procedure is required to be applied by the WC office when others contradict what the injured worker tells the WC office, according to Minister Tom Barton MP and Santo Santoro MP. But although the university did contradict what I told the WC office is the work I performed and so on, the WC office never applied the required statute to my case and never informed me. I was denied natural justice and opportunity to reply.

Condemned, with a hearing but without a fair hearing. Informing ministers that the safeguard was not applied leads nowhere when the WC office tells the minister that they were thorough and applied all laws. But this too is a sham because the WC office sends no substantiating evidence to the minister and there is none. It could be argued that there is an inbuilt protection system for public servants in any wrongdoing by them.

The next step under the FOI Act, after asking the WC office to perform

internal review on its decision not to correct the maladministration about the wrong and missing work, is to ask for external review by the FOI Commissioner. I requested external review and sent the documentary evidence, obtained under the FOI Act from the WC office and the university, showing the fact of maladministration.

The FOI Commissioner, who also wore the hat of the Ombudsman at that time, could not deny that the documents show the work maladministration. Instead the FOI Commissioner wrote that he would not correct it because it was "not affecting your health, house or relationships." I replied that all three were being affected and sent some evidence showing this. This too was ignored.

Voices of concern about democracy in Australia are growing louder. This concern was also mentioned in *The Whistle*, May 2006, in Derek Maitland's article, "The Gang of Six." I feel this concern is germane particularly when the Ombudsman's office and the FOI Commissioner both fail to perform their duty as required under their acts. And a university and the WC office can breach the law without accountability or transparency despite good laws, that are not applied.

There is more than one way to define democracy: There is democracy and there is liberal democracy. Democracy gives citizens the vote. Liberal democracy allows equity and justice for all citizens. Australia seems to lack a liberal democracy. However, the possibility that maladministration may yet be corrected remains because, surprisingly, one or two other avenues still seem to be available.

Muriel Dekker is a member of Whistleblowers Australia, founder of the Workers Compensation Support Network for injured workers, and member of the Historical Abuse Network, for those abused in the past in church and state children's homes and children's detention centres.

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New South Wales

“Caring & Sharing” meetings We listen to your story, provide feedback and possibly guidance for your next few steps. Held every Tuesday night 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.

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

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Conference and AGM

Whistleblowing: What are we Learning? National Conference

Saturday-Sunday 25-26 November 2006

Special guests: Dr A J Brown and his team from the Griffith University whistleblower study

Time and venue:
9am for a 10am start
Emmanuel College,
Sir William McGregor Drive,
St Lucia, Brisbane

Saturday conference: \$50
Sunday AGM & celebration: \$35
B&B accommodation at college: \$55

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