

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



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Sorry ... Jan did do the right thing

Hugh Mackay
Sun Herald (Sydney)
4 March 2007, p. 65

IT'S clear from readers' responses to the recent column about the bullying of a nurse that our workplaces often throw up the greatest moral challenges we face.

Many people seem capable of behaving quite differently at work from the way they behave with their families and friends: less open, less honest, more prepared to cut moral corners — sexually as well as financially — and more prepared to treat each other badly.

Perhaps it's the sense of the commercial imperative overriding all others that brings out the worst in some of us. Since the primary purpose of business is to make a profit, the temptations to behave unethically are many and varied, and the pressures of the commercial marketplace can encourage recklessness in people who might otherwise be fair, kind and reasonable.

Or perhaps it's the nature of the workplace itself — a place characterised by quite intense personal relationships where people are more exposed to each other, in a wide variety of testing circumstances, than in most other areas of their lives, even including marriage.

Workplaces are often like hot-houses, generating pressure partly from the need to meet deadlines and goals (commercial and otherwise) and partly from the need to get along with all kinds of people you might not necessarily choose to spend so much time with.

Research conducted in 2003 by PricewaterhouseCoopers showed that 47 per cent of Australian businesses had suffered from some form of economic crime — theft, fraud, corruption, bribery — in the previous two years. The vast majority were committed by employees against the companies they worked for.

That's actual crime we're talking about, not merely morally dubious

behaviour. But if that level of criminal activity goes on in our workplaces, it suggests there's something about the nature of the workplace itself that loosens the moral constraints governing other aspects of our lives.

Readers of this column have sent in countless examples of poor behaviour at work, often involving bullying and almost always involving bad outcomes for the people who speak up. Your stories suggest that the moral climate in many workplaces is, indeed, conducive to bad behaviour.

Many readers took exception to my recent suggestion that the nurse I called Jan had perhaps entered "hazy moral territory" by complaining about the bullying of someone else in the hospital where she worked.

The overwhelming view among readers was that Jan had acted properly and that we should speak up about bullying whenever it occurs, whether it affects us directly or not.

A reader from Queen's Park reminded me that "it is morally correct to oppose abuse in all its forms, and to stand up for those who are victimised, no matter how difficult, for this is the actual meaning of morality".

A teacher, similarly, pointed out that schoolchildren are now being taught to be part of a "telling" community, in which victims and bystanders should speak up.

On reflection, I had drawn quite the wrong conclusion about Jan. When we consider the peculiar moral climate of so many workplaces, there seems no alternative but to speak up. Shine the light in dark places. Always.

Will you lose your job as a result? Many readers have, and some regret having spoken up. Were they right to do so? Of course, not only because their courage will have left its mark, but because the moral climate at work will never improve until "speaking up" becomes the norm.

Vic: Whistleblower cop claims union bullying

Australian Associated Press
11 February 2007

Victoria's police force is led by a "mate-ocracy" under the control of the highly influential police association, whistleblowers say.

And they say the so called mate-ocracy rewarded loyalty more than ethics.

Detective Senior Constable Peter Kos, a former member of the police association executive, has spoken out about his fight with the union over paying the legal fees of detectives accused of drug trafficking.

Now an Ethical Standards Department member, Det Sen Const Kos was a union executive for three years.

He told the Nine Network today he was victimised for being a dissenting voice on the board when four policemen sought legal funding to fight corruption charges.

The four, including Detective Sergeant Glenn Saunders — a former senior vice-president of the union — were later acquitted.

Last year, without Kos, the union agreed to pay the fees, the program said.

Det Sen Const Kos said there was an anomaly in the approval process in 2003 when a sub-committee approved the funding, without his knowledge, between monthly meetings.

"I was unaware that the funding of their legal defence in relation to their committal (hearing) was held between meeting dates, which was not a normal process."

In 2004 and again in 2005 the board voted unanimously to reject application.

The program said confidential information was leaked to Saunders blaming Det Sen Const Kos and two others for rejecting the application, and despite requests the leak was never investigated by police.

Also, Union Secretary Senior Sergeant Paul Mullett sent an email to every delegate in Victoria saying Kos was spying on the union on behalf of

the media and force command, the program said.

Det Sen Const Kos, who now needs 24-hour security, rejected the allegation made by the union.

Former corruption investigator Simon Illingworth said investigating the police force was a dangerous job.

“It’s almost like a mate-ocracy, where loyalty above all else, in fact in some cases in the policing context it’s loyalty no matter what, or else,” he said.

Victoria’s former deputy Commissioner Bob Falconer said the union needed to lift its game.

“In this state and others, they have doggedly defended people accused of corruption and, dare I say, they have ridiculed or lampooned those who charge them,” Mr Falconer said.

“I think that police unions should lift the bar and that somewhere in their articles ... they should have something there, and mean it, about professionalism, ethics and honesty.”

Comment was being sought from Sen Sgt Mullet and Victoria Police.

Trust went missing with KEMH secrets

Gavin Mooney

West Australian, 5th January 2007

I have great respect for the noble profession of medicine. To care for patients and strive to reduce suffering is a marvellous way to make one’s contribution to society.

That is what good medicine, good doctors — and most are good — are about.

But doctors must earn our respect and trust as citizens.

Most do. I have a delightful caring GP, a lovely man, and I think he is technically a good GP. I really don’t know, but I trust him. The nature of medicine and of health services are such that we have to take much on trust.

I have read the “missing chapter” of the Douglas Inquiry into King Edward Memorial Hospital. This chapter deals with the poor clinical management of 92 cases. Five years later it has only just been released under FOI.

It makes for horrific reading and these are but a small selection of the many more cases occurring over the 1990s.

A whole decade when no one spoke up. Then eventually the newly appointed chief executive, Michael Moodie, took note of what the nurses were saying about the clinical culture at KEMH and blew the whistle. The Government’s stated reason for not releasing the chapter earlier? That it would create problems for the families involved in reliving these events.

Yet in *The West* one mother courageously told of her very sad experience at KEMH and how the publication of the missing chapter had at last brought some sort of closure.

The real reason the chapter was not published? The doctors threatened legal action if it was released! Note, it was not those who suffered and the families of those who lost babies unnecessarily who were to be protected. It was the doctors. Why did the Government cave in to the doctors and suppress that chapter? Would the doctors really have taken legal action? The Government should have called their bluff. They chose not to. Professor Geoff Dobb, WA president of the AMA, stated in advance of the release of the missing chapter: “I very much doubt there is anything in it that would serve the public interest by releasing it now.”

Oh dear, what about accountability and transparency, Professor Dobb?

The rest is history. The then director-general of health Mike Daube moved Mr Moodie out to the South-West to graze. Yet the denigrated Mr Moodie was not only innocent. But for his whistle blowing, KEMH might still be proceeding with its bad ways. Only one doctor suffered directly. But the good guy gets done over!

In a parallel case in Britain, at Bristol, the whistle blower there got an honourable mention in their Parliament from their Minister of Health who stated that he (the whistle blower) was “owed a debt of gratitude for what he did”.

So what now? All but four of the recommendations of the Douglas Inquiry have apparently been implemented. But have they made a difference to outcomes at KEMH? We have not been told. Why not? What about

the other tertiary hospitals? Are they squeaky clean? They may well be but would anyone at these institutions whistle blow after what has happened to Mr Moodie?

Why should we believe that the culture of cover-up that reigned for 10 years at KEMH does not infiltrate our other tertiary hospitals? What if anything is the current director-general of health, Neale Fong, doing to find out and to reassure us?

Shipped out to the South-West, Mr Moodie set up a citizens’ jury and a public forum to bring transparency to the workings of the area health service that he headed up there. These mechanisms allow ordinary citizens to have a say in the values underpinning the health system. Yet at a State level the values continue to be set almost certainly by the doctors, very certainly without any sort of public scrutiny.

That needs to change. This is our — the WA citizens’ — health service. Many doctors I am sure are distressed at what happened at KEMH. Yet since the publication of the missing chapter, I have seen no response from the AMA or from individual doctors.

Please, any of you good docs out there who care about the standing of your profession, now is the time to speak up.

There are two messages from the scandal at KEMH. The values underpinning our health service are too important to be left to the doctors alone. And doctors and the Department of Health must now work to regain the people’s and the patients’ trust.

Accountability and transparency must now be the watchwords.

Gavin Mooney is Professor of Health Economics at Curtin University and co-convenor of the WA Social Justice Network.

U.S. lets whistle-blowers lose jobs

Peter Eisler
USA Today, 13 March 2007

The federal government is sanctioning agreements that cost whistle-blowers their jobs after they expose safety and security lapses at nuclear facilities and toxic waste sites, Labor Department records show.

Federal law requires the department to safeguard whistle-blowers from reprisals and approve settlements of their retaliation claims against private or federal employers. Yet 45 of 73 settlements approved since 2000 involving whistle-blowers who complained of environmental and nuclear safety problems included permanent bans on working for the employer.

Rep. John Dingell, Democrat from Michigan, chairman of the House Energy and Commerce Committee, said in a statement that the clauses amount to blacklisting, which is barred under whistle-blower protection laws. He promised to investigate their use: "It is especially troubling to now learn that our own Department of Labor ... is recklessly approving (employment bans) to the detriment of individuals who had the audacity to report wrongdoing."

The employment bans stem from cases in which companies settled charges that they wrongly fired or disciplined whistle-blowers. In some cases, the settlements came after state or federal authorities validated the workers' concerns about safety and health issues.

The Labor Department released the agreements under a Freedom of Information Act request filed by the Government Accountability Project (GAP), a whistle-blower advocacy group that provided the records to *USA Today*.

GAP has petitioned the department to prohibit the employment bans. The group said the bans violate the workers' rights to keep their jobs under whistle-blower protection laws.

The Labor Department would not comment on details of the settlements it released to GAP. In a written statement, it said it is "giving careful consideration" to GAP's petition.

The agreements amount to "economic coercion," GAP lawyer Tom Carpenter said. "It's silencing those workers by removing them. ... It sends a message to everyone on site that raising a concern gets you a lifetime employment ban."

Whistle-blowers often wait months or years without pay while their cases await legal reviews. They tend to accept settlements with employment bans because they need the back pay and monetary damages, Carpenter said.

Gregory Keating, a Boston lawyer who represents employers in whistle-blower cases, said the restrictions are legitimate. "These agreements are knowing, they're voluntary, and you have a federal agency putting its stamp of approval on them that says the public interest is covered," he said.

If the Labor Department fails to bar employment bans, Dingell said, he will consider legislation to do so. Whistle-blowers "should be treated as heroes, not pariahs," he said.

Had to accept "defeat," says whistle-blower

Peter Eisler
USA Today, 13 March 2007

Police officer Mathew Zipoli had two years of service and a key job on the security force at Lawrence Livermore National Laboratory when he contacted federal authorities in 2001 to report safety and security lapses at the nuclear weapons facility, legal records show.



Mathew Zipoli

Seven months later, many of Zipoli's concerns had been confirmed by a federal investigation. The University of California, which runs the government lab, had promised to fix the problems. And Zipoli had been fired — wrongly, a state arbitrator later ruled.

It took nearly three years for the university to settle Zipoli's claim that

he was terminated illegally in retaliation for whistle-blowing. But the \$175,000 offer had a catch: the decorated Air Force veteran had to agree to give up his job and never work for the university again.

Lab spokeswoman Lynda Seaver says the employment ban was "a mutual decision."

Zipoli, who was on the lab's SWAT team, sees it differently. "It's a victory in which you must accept defeat," he says. "I was under huge financial pressure because of the debt I incurred while I was unemployed. I had to sell my house. If I hadn't taken (the settlement), it would have taken decades to unbury myself."

Congress has passed a series of laws aimed at protecting whistle-blowers from retaliation when they expose safety and security problems at nuclear and hazardous waste sites. The Labor Department must approve settlements when retaliation is alleged to ensure that the agreements are in the public interest.

Zipoli's settlement is one of 45 since 2000 that were approved with lifetime employment bans. The settlements were among 73 obtained by the Government Accountability Project (GAP), a whistle-blower advocacy group, under the Freedom of Information Act.

GAP and Representative John Dingell, who chairs the House Energy and Commerce Committee, want the department to prohibit employment bans in settlements. The department has promised to study the issue.

GAP gave *USA Today* access to the settlements it received. Among those with employment bans:

- Donna Trueblood, who worked at a private hazardous waste incineration plant in East Liverpool, Ohio. She was fired after telling state and federal environmental officials that toxic material was not being handled according to legal requirements. A judge ruled that her employer, Von Roll America, had illegally retaliated. The settlement, for an undisclosed sum, barred Trueblood from working at the site.

- Steve and Ginny Wallace, who worked for a private contractor handling high-level nuclear waste at the government's Hanford nuclear weapons reservation in Washington.

They were fired in 2003 after reporting that workers were being exposed to toxic fumes. After federal and state investigations, the contractor, CH2M HILL, was directed to bolster worker safeguards. The settlement of the Wallaces' wrongful termination claim barred them from work at Hanford.

Both settlements bar all parties from discussing the agreements' terms.

Gregory Keating, a labor lawyer for employers, says companies have a legal right to put whistle-blower complaints behind them. "The employer is saying, 'We've cooperated with the government, we're willing to resolve this and pay you X amount,'" he says.

Catherine Fisk, who teaches labor law at Duke University Law School, counters, "There's a public interest in not getting rid of employees who are watchdogs."

Zipoli, who now owns a restaurant outside Hartford, Connecticut, says he applied for law enforcement jobs but gave up. "It always boiled down to what took place at Livermore," he says. "You're seen as a troublemaker instead of someone with honor and integrity."

Whistleblowers and witch hunters

Christopher Brauchli
<http://www.counterpunch.org>
13 February 2006

Some are fired. Some are simply muzzled. When considering whether those events are a distinction or a disgrace the question that must be asked is "Who did it?" If it's George W. Bush it's a distinction. And so James E. Hansen joins Glen Hubbard, Paul O'Neill, Lawrence Greenfield, Brian Steidle, Susan Wood and a host of others who have been muzzled or fired for failing to promulgate or for exposing Bush lies.

Glen Hubbard was chairman of the Council of Economic Advisors. Before the Iraq war started George Bush and his lying cronies told the world the war would cost \$50 billion. Mr. Hubbard said the war would cost \$200 billion. They were both wrong. To date the war has cost more than \$238 billion

and the cost goes up by the minute. Mr. Hubbard was fired.

Secretary of the Treasury Paul O'Neill opposed tax cuts for the rich and federal budget deficits. He was fired. Lawrence Greenfield was the director of the Bureau of Justice Statistics. A congressionally ordered study found that Hispanic and black motorists were three times more likely to be searched or have their vehicles searched than were whites. Mr. Greenfield included the findings in his agency's press release announcing the study's results. He was told to delete the reference and refused. He was demoted.

Brian Steidle was a Marine captain who worked in Darfur, Sudan as a military advisor. He showed people pictures of acts of genocide taking place there. The state department ordered him to quit showing the photos. He refused. Nicholas Kristoff of the *New York Times* reports that Mr. Steidle has been told he is blacklisted from all U.S. government jobs.

There are other examples. These suffice to let Dr. Hansen know that he is in good company. The rest of us can take no such comfort.



James Hansen

Dr. Hansen is the longtime director of NASA's Goddard Institute for Space Studies and has been with the agency since 1967. He is one of the world's experts on global warming. He has been warning about the dangers of global warming for 18 years. Dr. Hansen says that 2005 was the warmest year on record. He says the burning of fossil fuels has caused a buildup of heat-trapping greenhouse gases. He has not been popular with George Bush for some time.

According to the *New York Times* he acquired his disfavored status when he gave a speech before the last presidential election saying he was voting for John Kerry. Things got even worse for him in December, 2005. That was the month in which he gave a dangerous speech of the sort that frightens George Bush. He said there should be a prompt reduction in emissions of greenhouse gases linked to global warming.

Mr. Bush disapproves of global warming. It's not the warming itself of which he disapproves. It's the concept. That's why he backed the United States out of the Kyoto treaty. Not everyone opposes the concept. There are some people even smarter than George Bush who think global warming may threaten mankind's very existence. Mr. Bush does not like to hear from them because they contradict what he believes. Just as Mr. Bush thinks he can do whatever he wants because he's president even if it means breaking the law, he also thinks he can believe whatever he wants even if he's wrong.

He can also silence anyone who works for him who, not sharing his ignorance, publicly says so.

After Dr. Hansen gave his speech he was told that thenceforth the Institute's public affairs staff would be required to "review his lectures, papers, postings on the Goddard website and requests for interviews from journalists."

This was not because all these people are smarter and better informed than Dr. Hansen. The reason everything must be reviewed is that the administration wants to control what Mr. Bush's subjects hear. Dr. Hansen says he will ignore the restrictions. "They feel their job is to be this censor of information going out to the public" he was quoted as saying.

Of course people at the Goddard Institute disagree.

Dean Acosta is the deputy assistant administrator for public affairs. He said that there was no effort to silence Dr. Hansen. "That's not the way we operate here at NASA. We promote openness and we speak with the facts."

In the hated December speech Dr. Hansen not only warned of the perils of global warming. He said that he and other climate scientists were being

muzzled. As the litany of muzzled and fired officials described above demonstrates, Dr. Hansen is in good company. It's the rest of us who suffer when the administration protects us from the truth. We'll get used to it.

Christopher Brauchli is a lawyer in Boulder, Colorado. He can be reached at Brauchli.56@post.harvard.edu

Whistle-blowers tell of cost of conscience

Number of complaints rises from government workers who say they confronted bosses over wrongdoing and then faced retaliation for it

Catherine Rampell

USA Today

24 November 2006, p. A13

He knew there were problems. He didn't think he was one of them.

In 2002, decorated FBI Special Agent Mike German was investigating meetings between terrorism suspects. When he discovered other officers had jeopardized the investigation by violating wiretapping regulations, he reported what he found to his supervisors, in accordance with FBI policy.

At the time, Coleen Rowley, the FBI agent who had raised concerns about how the pre-9/11 arrest of al-Qaeda conspirator Zacarias Moussaoui was handled, was being hailed as a national hero. German says he had also just received a mass e-mail from FBI Director Robert Mueller, urging other whistle-blowers to come forward.

"I was assuming he'd protect me," German says.

Instead, German says his accusations were ignored, his reputation ruined and his career obliterated. Although the Justice Department's inspector general confirmed German's allegations that the FBI had "mishandled and mismanaged" the terrorism investigation, he says he was barred from further undercover work and eventually compelled to resign. FBI spokesman Bill Carter declined to comment.

The experience is familiar to other government employees who have blown the whistle on matters of national security since 9/11.

Whistle-blower filings

Since the terrorist attacks on Sept. 11, 2001, the average number of employees filing whistle-blower disclosures with the government has risen 43%, from an average of 376 annually in the four years before the attacks to 537 annually after. The statistics are kept by the Office of the Special Counsel, an independent federal investigative agency that handles whistle-blower cases if employees prefer not to directly confront their bosses about suspicions of wrongdoing.

An increasing number of whistle-blowers allege that rather than being embraced, they're being retaliated against for coming forward.

In the four years before the terrorist attacks, whistle-blowers filed an average of 690 reprisal complaints with the OSC annually. Since the attacks, an average of 835 complaints have been filed each year, a 21% increase.

The number of whistle-blower reprisal complaints is higher than the number of whistle-blower disclosure complaints because employees can file reprisal complaints with the OSC even if they had not previously filed their disclosure with the OSC.

"The sad reality is that rather than learning lessons from 9/11, the government appears to have become more thin-skinned and sensitive," says Tom Devine, legal director of the Government Accountability Project, a non-profit group that offers legal aid to whistle-blowers.

Even advocates have begun to dissuade some government employees from coming forward.

"When I get calls from people thinking of blowing the whistle, I tell them 'Don't do it,'" says William Weaver, a professor at the University of Texas at El Paso and a senior adviser to the National Security Whistleblowers Coalition. "Most of the time they go ahead and do it anyway and end up with their lives destroyed."

Those who come forward often face harassment, investigation, character assassination and firing — not to mention the toll their whistle-blowing takes on their families, Weaver and Devine say.

Lack of protection

For those who are fired or have their security clearances revoked — tantamount to firing in the intelligence agencies — there is little recourse.

Most national security whistle-blowers are not protected from retaliation by law. That's because the intelligence-gathering agencies are exempted from the 1989 Whistleblower Protection Act, which guarantees investigations into disclosures made by federal employees and protects whistle-blowers from retaliation.

Whistle-blowers employed by these agencies must seek recourse within the same agency they are blowing the whistle on. And even if the investigators within their own agency confirm reprisal allegations, the investigators have no power to remedy the situation.

Devine says the U.S. Court of Appeals for the Federal Circuit has ruled against whistle-blowers in 125 of 127 of the reprisal cases seen by the court since 1994. "They've gutted the law," Devine says, "and it's degenerated into a rubber stamp for retaliation."

Lawmakers recently considered two sets of legislation that would affect whistle-blowers. One attempted to extend the Whistleblower Protection Act to cover intelligence agency employees through amendments to the 2007 Defense Authorization Bill.

In October, a conference committee removed the whistle-blower amendments from the final version of the bill.

The other bill that might affect whistle-blowers stiffens penalties for knowingly leaking classified information to those not authorized to receive it. That bill was introduced by Sen. Kit Bond, Republican from Missouri, in response to recent leaks to the media about national security programs, says Bond's press secretary, Rob Ostrander.

"When classified information is printed in the newspapers, it's not just Americans who read it," Ostrander says. "It's also America's enemies."

Bond's legislation would make prosecuting leakers easier by eliminating the need to prove the disclosure damaged national security. The measure would subject those who leak classified information to a fine and up to three years in prison. It would apply to those who signed a non-disclosure

agreement, regardless of their job at the time of the leak.

The bill uses language identical to that in a 2000 bill — dubbed the “Official Secrets Act,” after a similar British law — that was vetoed by President Clinton. It has been endorsed by the Association of Intelligence Officers, a 31-year-old group of 4,500 current and former intelligence officers.

Bond’s legislation has been referred to the Senate Judiciary Committee. If it does not make it to a floor vote by the end of this session, he will have to resubmit it when the next session begins in January.

The National Security Whistleblowers Coalition, the Government Accountability Project and various media organizations have criticized the legislation and claimed it would deter whistle-blowers from coming forward.

Ostrander says, “There are adequate opportunities for whistle-blowers to contact superiors and the federal inspector general’s office or their own representatives” without leaking classified information to outside sources.

National security whistle-blowers who have come forward since 9/11 aren’t so sure.

Many had been star employees at the top of the pay scale and had spent decades in civil service before blowing the whistle. The median number of years of government service for National Security Whistleblowers Coalition members is 22 years, says Sibel Edmonds, an FBI whistle-blower who founded the coalition. Edmonds and others worry that fear of committing career suicide may dissuade others from coming forward.

“I’m one of the last people who survived,” says Rowley, the former FBI whistle-blower and *Time* magazine “Person of the Year” who recently lost her bid for a U.S. congressional seat in Minnesota. She says widespread, favorable media coverage saved her FBI career

“But is that the important story here — that one person in the country has been fired or is not being used to their fullest potential?” she asks. “It’s the country that’s going to suffer from a lack of whistle-blower protections.”

The abandoned Abu Ghraib whistleblower

Nat Hentoff

Zwire.com, 22 December 2006

In his farewell address at the Pentagon, Donald Rumsfeld said that the worst day of his nearly six years as Secretary of Defense was the disclosure to the world of the photographs of the abuses at Abu Ghraib.

Those pictures might never have been known were it not for Joseph Darby, then a specialist with the Army’s 372nd Military Police Company at Guantanamo Bay. Because his moral code told him “it had to stop,” Darby may never be able to return home to Maryland.



Joseph Darby

In the December 10 interview with Darby on CBS’ *60 Minutes*, he told how the photos had been given to him by one of the perpetrators of the abuse, his friend, Charles Graner, now in prison. Knowing, as he says, the difference between right and wrong, Darby, anonymously, turned the pictures over to the Army’s Criminal Investigation Division. But they knew where he worked, and the investigation began on who gave him the pictures.

Darby told the *60 Minutes* interviewer Anderson Cooper that he had no idea the photos would go around the world; “but you can’t stand by and let this happen.”

Several months later, *60 Minutes II* obtained the pictures from another source; a *New Yorker* magazine article revealed Darby’s name; and Defense Secretary Rumsfeld said, at the time, in testimony before Congress that among those “who did their duty professionally” when the story broke was “First Specialist Joseph Darby, who alerted the appropriate authorities that abuses were occurring.”

While still at Guantanamo, Darby, in fear of retaliation, slept with a gun under his pillow. The Army decided to bring him back to the United States, ahead of his unit. Back home in Cumberland, Maryland, the whistleblower was a pariah. The commander of the local Veterans of Foreign Wars post, Colin Engelbach, told *60 Minutes* Darby “was a rat. He was a traitor. He let his unit down, he let his fellow soldiers down.”

Darby heard that in Cumberland, people who had known him since he was born — “my parents’ friends, my grandparents’ friends turned against me.” And his wife, Bernadette, heard people there say that her husband was “a dead man ... walking around with a bull’s-eye on his head.”

When he arrived at Dover Air Force base, with his wife there to meet him, the Army told Darby it wasn’t safe for him to go back to Cumberland, adding: “You can probably never go home.” And, indeed, reported Anderson Cooper, “the Army’s security assessment had concluded: the overall threat of criminal activity to the Darbys is imminent. A person could fire into the residence from the roadway.”

Darby, who left the Army recently, misses his home, as does his wife. Their current residence is secret. “It’s not fair,” Bernadette Darby told the *New York Daily News* (December 8). “We’re being punished for (him) doing the right thing.”

Does Darby regret that he turned over the pictures? “No, because if they’d been given to somebody else, it might not have been reported. We’re Americans,” he told Anderson Cooper. “We’re not Saddam ... We hold ourselves to a higher standard. Our soldiers hold themselves to a higher standard.”

He would do it again: “They broke the law, and they had to be punished. It’s that simple.” This American felt he had no choice. “The abuse had to stop.”

Left out of the otherwise admirable and necessary *60 Minutes* report, “Exposing the Truth” — and its subsequent press coverage — was any mention of who was ultimately responsible for the abuses at Abu Ghraib and at other prisons in Afghanistan and Guantanamo. Charles Graner, Lynndie

England and some of the other low-level guards in those photos have been punished, but not those much higher in the chain of command.

In early 2002, when the Defense Department asked for instructions on how far they could go in extracting intelligence information from hard-to-crack detainees, a cadre of high-level lawyers at the Justice Department and Pentagon — orchestrated by Alberto Gonzales, then Counsel to the President — set the grim climate for what happened at Abu Ghraib and elsewhere.

In a series of memos — a story first broken by Jess Bravin on the front page of the June 7, 2003, *Wall Street Journal* — he disclosed: “Bush administration lawyers contended last year that the president wasn’t bounded by laws prohibiting torture and that government agents who might torture prisoners at his direction couldn’t be prosecuted by the Justice Department.”

Among these lawyers: the most influential, John Yoo, is back teaching law at the University of California; Jay Bybee sits on the Ninth Circuit Court of Appeals; and the presidential nomination of William Haynes II to a federal appellate court is still pending in Congress. And Alberto Gonzales is now Attorney General of the United States.

Also not held accountable, above them, are the president, the vice president and Donald Rumsfeld. But Joe Darby can’t go home.

Nat Hentoff is a nationally renowned authority on the First Amendment and the Bill of Rights and author of many books, including *The War on the Bill of Rights* and *The Gathering Resistance*, Seven Stories Press, 2003.

Exposing the truth of Abu Ghraib

CBS Broadcasting, 7 December 2006

Exposing the truth has not been easy for Joe Darby. He turned in the pictures of prisoner abuse at Abu Ghraib in Iraq — pictures he discovered purely by accident.

He tells correspondent Anderson Cooper how he came upon those pictures, and how turning them in has

changed his life forever — for the worse.

Growing up in Appalachia, Joe Darby was just an ordinary Joe. He signed up to be an MP in the Army Reserve. His local unit was sent to Abu Ghraib where Darby worked in an office, while others guarded the prisoners. And then, one day when Darby wanted scenic pictures to send home, he spotted the unit’s camera buff, prison guard Charles Graner.

“So I walked up to Graner and I, you know, ‘Hey do you have any pictures?’ And he said ‘Yeah, yeah, hold on.’ Reaches into his computer bag and pulls out two CDs and just hands them to me,” Darby remembers.

Asked if he thinks Graner realized what was on these discs, Darby says, “I don’t think he realized what was on, but I don’t think it would have mattered either way. I knew Graner and Graner trusted me.”

That trust was about to change Darby’s life forever. He copied Graner’s discs and gave him back the originals. Later, when Darby looked at the photos he first saw scenic shots of Iraq, but then he came upon the pictures that launched the scandal. One of the first shots was a photo of a pyramid of naked Iraqis.

“I didn’t realize it was Iraqis at first, you know? ’Cause we lived in prison cells too,” Darby says.

At first, Darby thought the pictures were maybe of American soldiers goofing off. “I laughed. I looked at it and I laughed. And then the next photo was of Graner and England standing behind them. And I was like, ‘Wait a minute. This is the prison. These are prisoners.’ And then it kind of sunk in that they were doing this to prisoners. This was people being forced to do this,” Darby recalls.

Forced, Darby said, by Graner, who he called the ring leader.

Asked what Charles Graner was like, Darby says, “If you were around him long enough you saw that he had a dark side, a morbid side.”

And a sadistic side, according to Darby, who told *60 Minutes* Graner directed the abusive posing and picture taking during his night shift when he and his buddies were alone with the prisoners.

What was going through his mind when he clicked through the photos?

“Disbelief,” Darby says. “I tried to think of a reason why they would do this, you know.”

“Well there’s some who say, ‘Look, this is a valuable interrogation tool,’” Cooper remarks.

“These were MPs. Our job wasn’t to interrogate prisoners,” Darby says.

“There has been testimony that some of the MPs were told to soften the prisoners up, that this was part of that,” Cooper says.

“And I’ve heard that. And I wasn’t there. I didn’t work the tier. I can’t say that that didn’t happen,” Darby replies.

But no matter why they were doing it, Darby knew what they were doing was wrong.

“I’ve always had a moral sense of right and wrong. And I knew that you know, friends or not, it had to stop,” Darby says.

Darby says his unit was close-knit, many of the members coming from similar small town backgrounds.

Still, Darby decided he had to turn in the pictures but he didn’t want his friends to know that he had done it.

Asked why it was important to him to remain anonymous, Darby says, “I knew a lot of them wouldn’t understand and would view me being a stool pigeon or however, a rat, however you want to put it.”

“You knew there would be some kind of investigation?” Cooper asks.

“I knew these people were going to prison,” Darby says. And in his opinion, they deserved to go to prison.

Darby copied Graner’s pictures onto a disc and put it in an envelope with an anonymous letter. He took the envelope to the Criminal Investigations Division — CID — and told them it had been left on his desk.

“I said, ‘This was left in my office. I was told to give it to the CID.’ I said, ‘Have a nice day, Sir,’ and turned around and walked away,” Darby recalls.

Darby hoped that would be the end of it but within less than 45 minutes, the investigator came to him.

And the investigator knew that Darby wasn’t telling the truth. He promised to keep Darby’s name secret, and convinced him to explain how he had really gotten those pictures. Then investigators immediately began to round up the suspects.

“Once they were brought in, once this investigation began, were they removed from the base?” Cooper asks.

“No,” Darby says. “They still had their weapons. They still had unlimited access to the facility and me the whole time, for almost a month.”

He says he was very scared and even slept with a pistol under his pillow. “With my hand on it. I put it in my pillow case, I put my hand on it and cocked it, cocked the hammer and I’d sleep with it under my hand under my pillow,” he remembers.

He slept like this every night. “I slept in a room by myself. And anybody could come in in the middle of the night. You walk in the door, you hang a left, and then come in and cut my throat,” Darby says.

“And you really thought that could happen, someone could cut your throat?” Cooper asks.

“I knew that if they found out who did it, they would be after me,” he says.

Weeks later, the guards under investigation were removed and Darby could finally sleep without a gun under his pillow. The suspects were gone, and his name was still secret.

Several months later, *60 Minutes II* broke the story of the pictures. An article in *The New Yorker* revealed Darby’s role, though no one in Iraq seemed to notice.

But then, while Darby was having lunch in the mess hall watching Donald Rumsfeld testify before Congress about Abu Ghraib, the defense secretary said, “There are many who did their duty professionally and we should mention that as well. First, Specialist Joseph Darby, who alerted appropriate authorities that abuses were occurring.”

“I just stopped in mid bite. I was eating and I just stopped. What the hell just happened? Now the anxiety came back. Now, I’m worried,” Darby remembers. “Everyone in the unit knew within four hours.”

What was the reaction?

“It wasn’t as bad as I thought it would be. You know, I got support,” Darby says.

But he didn’t get support back home in Cumberland, Maryland, a military town that felt Darby had betrayed his fellow soldiers.

The commander of the local VFW [Veterans of Foreign Wars] post, Colin Engelbach, told *60 Minutes* what people were calling Darby.

“He was a rat. He was a traitor. He let his unit down. He let his fellow soldiers down and the U.S. military. Basically he was no good,” Engelbach says.

Asked if he agrees with that, Engelbach says, “I agree that his actions that he did were no good and borderline traitor, yes.”

“What he says in his defense is ‘Look. I’m an MP. And this is something which was illegal,’” Cooper remarks.

“Right. But do you put the enemy above your buddies? I wouldn’t,” Engelbach replies.

[CBS editor’s note: Colin Engelbach, the commander of the VFW post in Cumberland, was giving his own personal opinions to *60 Minutes* and not speaking for the VFW or anyone else.]

Their hometown held a vigil for members of his unit, including the accused, not however, for Joe Darby.

“These were people who knew me since I was born. These were people who were my parents’ friends, my grandparents’ friends that turned against me,” Darby says.

To prevent any soldiers from retaliating against him in Iraq, the military sent Darby back to the states early, ahead of the rest of his unit.

“I get called into my commander’s office at like ten o’clock at night. He said, ‘Do you have your bags packed?’ I said ‘Sir, we live in a tent. I always have my bags packed.’ He said ‘Good. Be on the flight line. In an hour you leave,’” Darby recalls.

When Darby arrived at Dover Air Force Base, his wife Bernadette was there to meet him. He thought they would head back home, but the Army had other plans.

An officer asked Darby what he wanted to do. “I said, ‘Sir, I just want to go home. I’ve always just wanted to go home.’ He said, ‘Well son, that’s not an option.’ He said, ‘The Army Reserve has done a security assessment of the area and it’s not safe for you there. You can’t go home,’” Darby remembers. “‘You can probably never go home.’”

“They said, ‘If you had to choose, where would you want to live?’ And you know basically where do you pick, you know? You’ve lived a whole life in one area,” he says.

Asked if it seemed fair to him, Darby says, “No.”

“It’s not fair. That we’re being punished for him doin’ the right thing,” his wife Bernadette adds.

The local VFW commander told Cooper the military was right to keep Darby out of town. “Probably so. There was a lot of threats, a lotta phone calls to his wife,” Engelbach remembers.

He says there was a lot of anger in Cumberland. “‘Cause it really did put our troops in harm’s way more so than they already were,” Engelbach says.

Bernadette Darby says she heard people calling her husband a traitor, that he was a dead man and that he was walking around with a bull’s eye on his head.

To keep Joe and Bernadette safe, the military moved them to an Army base with body guards around the clock. “I couldn’t go anywhere without security. Nowhere,” Darby remembers.

“Even goin’ to a restaurant?” Cooper asks.

“We walk in with, me and her and six guys?” Darby says, laughing. “And all of ’em are armed.”

Darby says he was protected by bodyguards for almost six months.

While he was a villain to his neighbors, he was a hero to people he had never met, including Caroline Kennedy and Senator Ted Kennedy, who gave him a “Profile In Courage” award in honor of President John F. Kennedy.

Joe left the Army recently, and he misses it. He and Bernadette miss their hometown as well. They say they’ll never move back to Cumberland. Instead they’ve moved on, but they are still wary.

All Darby will say is that they have started over. He doesn’t want to share what he does now, where he lives or talk about his family. “I worry about the one guy who wants to get even with me,” he explains. “And that one guy could hurt me and my family.”

Asked if this has made him paranoid, Darby says, “To a degree.”

And some relatives from both sides of the family have turned against him and his wife.

Six of the seven guards involved in the abuse went to prison. Darby testified against Charles Graner. "He just gave me this stone cold evil stare, the entire time I was on the stand. Didn't take his eyes off me once," Darby recalls.

"What was the look?" Cooper asks.

"You put me here. And someday I'll repay you for it," Darby says.

Darby had been under a gag order until the trials ended. He gave his first interview to *GQ*. And he told *60 Minutes* he wants to restore his unit's honor.

"I want people to understand that I went to Iraq with 200 of the finest servicemen I've ever seen in my life. But those 200, for the rest of their lives, their unit is gonna carry a bad name because of what seven individuals did," Darby says.

Maj. Gen. George Fay, who investigated Abu Ghraib, told *60 Minutes* that Graner and his gang took the vast majority of the pictures for their own sadistic amusement, but that in a few cases, military intelligence officers had asked the gang to soften up a prisoner. The general called Darby "courageous" for blowing the whistle.

Darby says he didn't want the pictures leaked to the media. "I never thought it would be anything the media would get a hold of, and even if they did, I didn't think it would be as big as it was," he says.

"Do you wish that it wasn't you who was given the CDs?" Cooper asks.

"No, because if they had been given to somebody else, it might not have been reported," Darby says.

"And would that have been so bad, if it had never been reported?" Cooper asks.

"Ignorance is bliss they say but, to actually know what they were doing, you can't stand by and let that happen," Darby replies.

"There's still a lot of people though that'll say 'Look, you know, so what they did this. You know, Saddam did things that were much worse,'" Cooper remarks.

"We're Americans, we're not Saddam," Darby says. "We hold

ourselves to a higher standard. Our soldiers hold themselves to a higher standard."

Asked if he'd do it again, Darby says, "Yes. They broke the law and they had to be punished."

"And it's that simple?" Cooper asks.

"It's that simple," he replies.

Agency pays whistleblower to keep quiet

David Fisher and Patrick Crewdson
New Zealand Herald on Sunday
9 April 2006

A former civil servant was gagged by Housing New Zealand Corporation bosses after alleging serious accounting problems involving millions of taxpayer dollars.

Housing Minister Chris Carter has called for urgent explanations from the agency after being told of a *Herald on Sunday* investigation into the handling of the allegations.

He has called a board meeting tomorrow and issued a reprimand over the involvement of corporation chief executive Helen Fulcher and senior executive Gerard Coles in gagging a whistleblower.

On Friday evening, Housing NZ Corporation admitted to the *Herald on Sunday* it was a mistake to ban a public servant from taking the allegations to government ministers.

Board chairman Pat Snedden also confirmed the corporation would call in external auditors to review its books — although Mr Carter has signalled wider inquiries.

The whistleblower, who held an executive position at HNZC, has told the *Herald on Sunday* that:

- accounting of taxpayer money was being "manipulated" so programmes "come out on budget"
- a senior manager in Housing NZ is aware of the accounting "manipulation" and is "encouraging it"
- management reports supplied to Mr Carter are "untrue"
- there is deliberate lack of scrutiny over invoices being sent to one particular division of the corporation
- overspending of \$2.1 million of taxpayer money was hidden and rein-

troduced in a later period when additional funds were available to balance the books, with accounts falsified to appear on time and on budget.

The whistleblower will not be named — but said he would be identified if called before a parliamentary select committee to give evidence.

"I believe the public have a right to know," he said.

The allegations are among the most serious against a government agency since Labour came to power in 1999.

A spokesman for Mr Carter said the minister wanted an assurance from the agency's board that the Government could have confidence in its financial reporting.

"The Minister is calling the board in on Monday for a full report on these allegations and how they've been dealing with them.

"He does not believe it is appropriate for the confidentiality agreement that the allegations refer to, to prevent members of the public raising concerns with MPs or Ministers," he said.

"He does not believe it's appropriate and will be communicating as much to Housing NZ Corporation."

The spokesman said Mr Carter was not ruling out further action and would take advice from agencies responsible for monitoring Housing NZ, including the Department of Building and Housing.

Mr Snedden said the agency had taken "significant action" to investigate the allegations. So far, they related to technical and accounting processes rather than matters of deeper concern.

"We have found nothing untoward. The matters would appear to relate to issues of technicality and accounting process routinely dealt with through our own audit and assurance programme."

Mr Snedden said he was now calling in external auditors Ernst & Young to carry out the investigation because the allegations had become public. "Their report will be available to the minister on completion," he said.

He said the contract that banned the whistleblower from "his unfettered right to raise any matter with an MP or minister" went too far. "This was a mistake on our part." He said the contract was signed to protect the

privacy of staff named in the allegations.

The action by Mr Carter comes after eight months of fighting by the whistleblower, who made his allegations known to NewstalkZB radio three weeks ago, to have his concerns properly investigated.

In a letter dated November 23 last year, the corporation promised the civil servant — a former contractor — his most serious allegations would be investigated by external auditors. It also states that other less serious allegations would be investigated internally.

Then Mr Coles, with Ms Fulcher's approval, had the whistleblower sign an agreement that banned him from speaking to "any Minister, [or] MP."

It stated that the former civil servant would receive his \$3000 final pay only if he signed the agreement. If he refused, that money would have been withheld.

The agreement also watered the level of inquiry down to be carried out to the "satisfaction of HNZC's external auditors."

The whistleblower came forward after emails from the agency last month caused concern that the entire investigation was being carried out internally.

The whistleblower left the corporation in August last year after raising his concerns with management.

He became involved in an argument with one manager and was banned from the Manukau national office after refusing to apologise.

The *Herald on Sunday* has copies of letters sent to the man from Mr Coles, confirming the allegations were made by the whistleblower last year.

Housing NZ accounting documents obtained by the *Herald on Sunday* were studied by John Leonard, a forensic accountant for Gerry Rea Associates who spent seven years with the Serious Fraud Office.

He said information in the spreadsheets raised concerns that should be studied by an independent body.

"There are several things that, for me, need to be investigated or at least explained. I believe the allegations are such that it is worthy of a high-level independent review, perhaps at ministerial level or Audit New Zealand.

"At the lowest level of interpretation, the data would suggest that accounting information is being fudged, perhaps to keep within budget constraints that are placed on Housing New Zealand Corporation," he said.

Act [Liberal Party] leader Rodney Hide has viewed Mr Coles' letters and called for a full inquiry into the allegations.

"These are very serious allegations of financial mismanagement and the fudging of the books," he said.

"The sums aren't trivial and what's alleged is deliberate misstating of the corporation's financial position."

Mr Hide also condemned the agency's handling of the whistleblower's complaints.

"It's truly shocking that Housing New Zealand would then attempt a cover-up of what is alleged by a gagging order that prevents the whistleblower from even seeing his MP. That alone is cause for an inquiry."

National Party finance spokesman John Key, a former executive at investment banking giant Merrill Lynch, said that although he hadn't seen the details of the allegations, they appeared to warrant further investigation.

"I'm concerned that a government agency is making employees sign gagging contracts that include monetary payments, especially when it's the employee's own money in the first place," he said.

"We don't want this example to set a precedent for other cases where whistleblowers are paid off."

Mr Key sits on the finance and expenditure committee and said he would urge the committee to launch an inquiry.

Lawyer says gagging contract "illegal"

A Housing NZ Corporation gagging contract is probably illegal and impossible to enforce, says Auckland University constitutional and employment law expert Bill Hodge.

Mr Hodge said public servants had an automatic duty of confidentiality, but there was an exception when their employer was committing fraud or another crime, or when there was an over-riding public interest.

The contract, dated December 14, agrees to pay a former Housing NZ executive his final pay of \$3000 on condition "you agree not to communicate publicly or privately" his concerns about accounting manipulation. It specifically tells the whistleblower he is not allowed to discuss his concerns with "any Minister, [or] MP."

The contract was written by Gerard Coles, Housing NZ's general manager of assurance services, one level below chief executive Helen Fulcher. It also states the contract is "subject to chief executive approval."

The contract also states that the payment is "not an admission of any wrong-doing by HNZC or its [sic] employees."

It states that the agreement is confidential and the former executive will have to pay back the \$3000 if he discloses it.

"I would be outraged if a government employee was shut down because he wanted to reveal something that was going wrong in that department," Mr Hodge said.

"You can't take away people's constitutional rights, whether it's suffrage or access to the Government or access to your representative. That is not something that one can surrender by contractual agreement."

And he said it was illegal for Housing NZ to make the executive's final pay conditional on a confidentiality agreement.

"You never need to sign an exit agreement with respect to receiving that which is yours as of right."

Editor's comment

Thanks for everyone who sent me media items for possible use in *The Whistle* — including those I wasn't able to use. Please send me your own articles too!

Brian Martin

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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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2007 AGM and conference

The Whistleblowers Australia Annual General Meeting and Conference this year will be on 24 and 25 November, in Sydney. It will be held in a very attractive semi-rural setting in North Parramatta, fully accessible by train and bus. The conference centre, managed by the Uniting Church, is modern, with all facilities, and has its own accommodation. The theme for the conference is tentatively “Whistleblowing in 2007: what lies ahead?”

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.

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