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

The Whistle

NO. 54, APRIL 2008

Newsletter of Whistleblowers Australia

Media watch

Call to beef up law for whistleblowers

Jonathan Dart
Sydney Morning Herald,
19 March 2008, p. 10

FIGURES reveal a sharp decline in the number of complaints made against public officials in recent years, leading to calls for laws protecting whistleblowers to be bulked up.

Two of the state's best-known whistleblowers — responsible for exposing the pedophile Milton Orkopoulos and the Bega doctor, Graeme Reeves — openly criticised whistleblower laws yesterday, saying they offered little protection.

Whistleblowers Australia's NSW president, Peter Bowden, yesterday sent a letter to the NSW Premier, Morris Iemma, calling for the immediate introduction of the reforms tabled by the Independent Commission Against Corruption in a report to Parliament in 2006.

The recommendations come as figures from the State Ombudsman's office reveal a decline in the number of protected disclosures made in the past eight years, from 153 in 2000 to 76 last year.

In his letter, Dr Bowden said the "problems of Wollongong Council and the 'Butcher of Bega', for instance, would likely have been stopped long before they reached the stage they did if the recommendations of the committee had been adopted."

The commission's review found some disturbing holes in the legislation. People making complaints to the Health Care Complaints Commission, for instance, are not to be extended "whistleblower" status under the Protected Disclosures Act.

The head of the Medical Error Action Group, Lorraine Long, who helped expose the disgraced doctor Mr Reeves, said the current laws protected incompetence and malpractice.

"Anyone who raises their head above the parapet can pretty well kiss their job goodbye," she said.

Dr Bowden called for a new unit to be established in the Ombudsman's office to co-ordinate protected disclosure investigations — a recommendation also made by the ICAC report — and said whistleblowers should be allowed to approach the media.

A spokeswoman for Mr Iemma said the unit was unnecessary because many of its functions were performed by government agencies.

But Ben Blackburn, the sex assault victim who blew the whistle on Orkopoulos, said the protected disclosure laws were "completely ineffective. Look at what happened to [Orkopoulos's electorate officer] Gillian [Sneddon] and myself — there's just no protection there at all."

Whistleblower's life in ruins

Linton Besser
Sydney Morning Herald,
15 March 2008, p. 5

RAILCORP has spent almost $300,000 in a three-year legal battle against an employee who blew the whistle on corruption and fraud. Now it is appealing the $16,000 unfair dismissal compensation she was awarded by the courts.

Midway through 2002, as a revenue protection officer, Bimla Chand told management about serial timesheet fraud and an overtime scam that may have cost the organisation thousands of dollars. For this the 48-year-old single woman says she was subjected to years of harassment and bullying by colleagues.

The final act of humiliation, however, was her dismissal in 2005, on what the courts later deemed were spurious psychiatric grounds.

After tax, Ms Chand was to receive $11,381 from RailCorp when the Australian Industrial Relations Commission ruled in December she had been wrongly dismissed.

But now RailCorp has appealed to recoup this amount in an act Ms Chand believes is emblematic of an organisation bent on silencing its critics.

"With all the talk from politicians about whistleblower protection, blowing the whistle has ruined my life," she said. "State Rail not only wants to bury me, they want to dance on my grave for daring to speak out."

Some of Ms Chand's allegations have been given new currency by a lengthy investigation by the Independent Commission Against Corruption.

Evidence during public hearings has described a culture of claiming pay for unworked periods in a widespread scam known within the organisation as "job and knock".

RailCorp has used the law firm Clayton Utz for this matter and a discrimination case Ms Chand brought in the Administrative Decisions Tribunal.

Since March 2005 RailCorp has spent $291,612.77 on legal fees on the unfair dismissal case alone. It is unclear how many thousands more it has spent on her discrimination claim.

"I was just so angry and disappointed. My returning [to work] would have cost a 10th of the $300,000 they have spent," she said.

Last October the Administrative Decisions Tribunal dismissed Ms Chand's discrimination case. It decided that several incidents she described fell outside court time limitations.

She has appealed, and a decision on her appeal is due within the next few months.

Ms Chand's lawyer, Michael Vassili, said the chronology of both cases was all about "shooting the messenger".

"The evidence shows that they spend very little effort in dealing with the accusations of corruption. This is highly unusual. There is no commercial reason they would embark on the appeal. It fits squarely within Bimla's claim of being victimised because she was whistleblower. The decision to appeal is obviously a decision based on politics."

RailCorp based its case on a psychiatric report that it commissioned which said Ms Chand suffered "probable paranoid personality disorder" and was not fit for work. Three previous reports from the same psychiatrist had found she was capable of returning to work, and the diagnosis

was contradicted by three independent experts.

The Australian Industrial Relations Commission judgment said Ms Chand's behaviour in the last year or so she was with RailCorp was "belligerent" and "obstructive". Medical experts had said it was in keeping with someone under intense stress.

"The evidence is them dealing with her conduct of complaining as a medical basket case as opposed to them seriously dealing with her complaints," Mr Vassili said.

Ms Chand said she would continue to fight on, despite spending almost $90,000 of her own money in the courts. But she would tell present RailCorp employees "not to report corruption and don't go down the path I went", she said. "Because it is four years out of my life without work and with no prospect of getting any work. Basically my career has come to a grinding halt as a result of acting in the best interests of my employer and NSW."

A RailCorp spokeswoman, Jo Fowler, said she could not comment on the legal proceedings, but added: "At no stage has the ICAC requested RailCorp to investigate any claims Ms Chand has made at any time nor is RailCorp aware of any investigation by the ICAC into any claims Ms Chand may have made."

Secrecy and us: society has grown accustomed to the gag

[editorial]
Sydney Morning Herald,
15 March 2008, p. 38

THIS has been a poor week for open government. On Monday the Herald published the findings of a secret report by secondary principals showing Anglo-European families were avoiding government schools. It is an important issue — sensitive, certainly, but needing public scrutiny and debate. Its ramifications spread beyond schools to broader questions of social cohesion. The State Government received the report in February 2006 — and has sat on it ever since.

On Tuesday we published a police list of the 100 most violent pubs and clubs in the state. The Bureau of Crime Statistics and Research was happy to hand over the list of assaults it compiled using police data. But the NSW Police continue to oppose a Herald freedom of information application for a more comprehensive list which attempts to link all alcohol-related crimes to where those involved were last drinking. On Wednesday and Thursday we revealed that a former inspector in charge of the linking project had left the police, where he had opposed the Herald's request, to work for the Australian Hotels Association. His first task: to keep the same data out of the media.

Today we publish the story of a woman who made allegations of malpractice at RailCorp, only to be hounded out of her job, and pursued through the courts.

A single dark thread unites these stories: our State Government, its bureaucrats, and our society in general, tolerate and encourage attempts to silence critics and suppress information.

When the SARS virus struck southern China late in 2002, countries around the globe were critical, and rightly so, of Chinese authorities' attempt to suppress evidence of a dangerous epidemic. It took three months for Beijing to admit the presence of the new virus — in which time it had spread, and infected many individuals, some of whom died. Australians joined the criticism. Yet we tolerate practices which, if their consequences are not as deadly, spring from the same perverse and destructive motivation: to avoid public embarrassment or financial loss. That end is pursued regardless of almost any damage to the greater public good.

It is a long tradition, as the story of the Hunters Hill uranium smelter shows. A memo in 1977 instructed Health Commission staff to "stall and be non-committal" if asked about radiation levels at the former site, which had been sold off as residential land.

The tradition lives on in the State Government's continued cover-up of the findings of its restaurant health inspectors. In putting the interests of restaurant owners ahead of the interest of diners, it reverses a worldwide trend. After the Herald's campaign on the subject, there was a promise to do better, but with the lapse of time the Government's will has weakened. Instead of revealing all infringements and letting the public decide where to eat, only the worst offenders will be named. Here, secrecy is a recipe for poor hygiene. Why should any but the very worst offenders clean up their act? As the Herald has found time and again, freedom of information legislation is virtually a dead letter.

The starting point for policy-makers and bureaucrats of any kind is that everything must be kept secret, never mind who or what is damaged by the secrecy. Unless scandal forces information into the open, it will be concealed. The only other way Government information will regularly emerge is when it is leaked to damage some powerful person or group's opponents.

We get the politicians we deserve, of course. The Government is allowed to behave this way in a position of public trust because we as a society tolerate such behaviour and behave similarly ourselves.

Unwelcome though the thought is in a mature democracy, Australians are so used to secrecy and comfortable with bullying and subterfuge that many of us seem to have forgotten the virtues of openness and honesty. Pressure groups insist that factual information about their performance should not be released. Teachers will not have their schools' performance rated. Medical bureaucrats oppose league tables of hospitals. Why? Because the public might make up its mind — and act accordingly. It is a sad reflection on 21st century Australia: we see the gag so often applied that we have learnt to like it.

Principles of liberty treated with disdain

Brian Toohey
Weekend Australian Financial Review,
21-27 December 2007, p. 78

Free societies don't allow inquisitorial commissions to threaten blameless witnesses with six months' jail. Nor do free societies pass laws stopping an

independent judiciary from putting a brake on power-hungry executive governments.

Violations of core principles underpinning liberty were once regarded as confined to nasty autocratic states. But they have become so commonplace in Australia as to barely cause a ripple. The complacency extends to those who usually stress the importance of individual liberty to capitalism.

On December 13, a new law was proclaimed in NSW that prevents the actions of "protected persons" associated with the World Youth Day Authority from being "challenged, reviewed, quashed or called into question before any court of law or administrative review body." The new law is modelled on the way normal safeguards are removed in the Terrorism (Police Powers) Act of 2001 — the underlying premise being that NSW's finest can be trusted never to abuse the extraordinary powers they now have over all citizens during a counter-terrorism operation.

World Youth Day is a misnomer. It is a six-day jamboree for Catholic youth (generously defined as those under 35) scheduled for next July in Sydney. The NSW and federal governments are paying $41 million as compensation for the way trainers are being evicted from Randwick Racecourse for 10 weeks to allow preparations for a sleepover by young Catholics followed by a papal mass. The total taxpayer subsidy is more than $95 million — an Australian record for a religious event.

A week ago, *The Sydney Morning Herald* revealed that an innocent person was recently hauled before the Australian Building and Construction Commission and interrogated over several hours about a minor scuffle he had witnessed between a union official and a building site manager on a Melbourne footpath. The witness faced six months' jail if he refused to answer questions or told anyone about what happened in the hearing.

Police don't have these powers. Nor, in a free society, should inquisitorial commissions when examining a trivial incident over which no charges have been laid.

At least this law does not provide for five years' jail for an innocent person who refuses to comply with the extraordinary questioning powers granted to the Australian Security Intelligence Organisation in 2001. These powers, for example, allow ASIO to compel people to reveal the location of someone whom the CIA wants to assassinate or torture.

Apart from problems of mistaken identity, no one should be compelled to supply such information or spend five years in jail for exposing demands to enable such illicit activities.

Former ASIO officers privately warn that these changes in effect create a secret police force. They say that in a democracy no one should be able to detain anyone, or compel them to answer questions, unless they are made accountable by having to reveal their real names. Unlike normal police, ASIO officers can legally use pseudonyms. This was fine when they had almost no executive powers to abuse. But not anymore.

This secrecy extended to a recent court hearing in which an ASIO member, named "Officer 1," appeared by video link as a witness called by News Ltd in a defamation action brought by Sydney man Mamdouh Habib. The ASIO officer gave evidence about interrogating Habib after he was arrested in Pakistan and flown by the CIA to Egypt.

The former chief economist for HSBC in Australia, Jeff Schubert, who has followed the case from Russia, says: "For all we know, Officer 1 could be an actor! If not, how did News Ltd find him? Presumably, it asked ASIO to provide him as a witness, knowing full well that he would readily tell the story it wanted the court to hear. Sitting here in my Moscow apartment, I wonder what News Ltd [editorial executives] would have to say about this practice in a Russian court."

Habib was reportedly tortured for several months in Egypt before being flown to Guantanamo Bay and eventually released without charge. A free society would establish a proper inquiry into the role of Australian intelligence agencies in the false imprisonment and torture of someone who has not been charged, let alone convicted, of a criminal offence.

Fortunately, a court was able to do its job in a recent case where ASIO did not resort to its special questioning powers. A NSW judge found that two ASIO officers had kidnapped and falsely imprisoned Izhar ul-Haque, who had attended a training camp in Pakistan before leaving after only three weeks.

The camp was not run by a designated terrorist organisation at the time. On his return to continue his medical studies, ul-Haque told Australian officials what he had done. Neither ASIO nor the Australian Federal Police showed any further interest until several months later when they asked ul-Haque to become an informer against other Muslims in Sydney.

Judge Michael Adams said ASIO officers threatened ul-Haque with "serious consequences" if he didn't cooperate. The court heard AFP officers told ul-Haque they weren't worried about what happened in Pakistan. After he refused to cooperate, he was arrested. But the case collapsed in court.

The importance of an independent judiciary and a sceptical media was highlighted even more forcefully in the earlier case of Mohamed Haneef. The case collapsed after the AFP could not present a jot of credible evidence. Yet AFP commissioner Mick Keelty is still complaining about how Haneef's barrister demolished the police case by revealing accurate information belonging to his client.

Keelty has gall. A senior officer had earlier "leaked" false claims intended to damage Haneef. If he keeps his job, Keelty should be put on a much tighter leash. And the role of the courts in curtailing abuses of executive power should be fully restored.

Whistleblower turns down new job offer

Edmund Tadros and Andrew Clennell
smh.com.au, 18 March 2008

The woman who blew the whistle on former NSW minister and convicted pedophile Milton Orkopoulos and was then fired by NSW Parliament has rejected a new job offer from the Speaker of the house.

Gillian Sneddon, 51, is furious after the Speaker of the NSW Parliament, independent Richard Torbay, issued a statement at the weekend saying he was willing to have "ongoing discussions" about possible employment for her.

She said it was too late to now offer her a job as she no longer trusted her former employer, the NSW Parliament.

The Speaker admitted yesterday he issued the statement and job offer after he spoke to Premier Morris Iemma but denied that Mr Iemma had a hand in the statement.

The Herald revealed on Saturday that Ms Sneddon's employment as an electorate officer was terminated by the NSW Parliament on February 22, the day she first testified against Orkopoulos.

Yesterday, she said: "I didn't want to be made redundant. I wanted to get well and get meaningful employment. It's to save face. It's not a genuine offer."

She said the stress, which has caused her to be admitted to hospital and almost led her to suicide, was brought on by being ostracised by her colleagues, the state Labor Party and the NSW Parliament after she alerted police about Orkopoulos in October 2006.

Last week Orkopoulos was convicted on 28 charges, including having sex with three boys and supplying them with drugs between 1995 and 2006.

Ms Sneddon said that she was told she would be made redundant after the 2007 election but this did not happen until February of this year.

Mr Torbay said Ms Sneddon's case was "unfortunate and disappointing" but denied it was caused by the NSW Parliament.

He said he sent her a letter yesterday offering to meet her in person to discuss her grievances.

Mr Torbay said that Ms Sneddon would be given a standard payment of $65,000 as part of her termination and that she was still clear to pursue legal action.

Ms Sneddon said: "What I wanted them to say is 'We're proud of what you've done, and what can we do to help you get better and get back into employment'."

Her comments come as federal Liberal senator Bill Heffernan told smh.com.au that he was disgusted at the "moral cowardice" shown by the Iemma Government over Ms Sneddon's treatment and has offered to assist her find employment.

"It's just a disgrace for people to treat her as a traitorous person," Mr Heffernan said.

Ms Sneddon said Mr Heffernan called her at the weekend offering support and telling her "the cavalry has arrived".

Whistleblower undergoes ordeal by appeal

Third trip to U.S. Fourth Circuit for Park Service asbestos hero

YubaNet.com, 2 February 2008
by Public Employees for Environmental Responsibility (PEER)

The Bush administration is putting a whistleblower through an eight-year ordeal by appeal to finally win his case, according to court filings posted today by Public Employees for Environmental Responsibility (PEER). One of the nation's most conservative appellate courts has twice unanimously overruled Bush administration objections to the whistleblower's claims but now the case is going back to the U.S. Court of Appeals for the Fourth Circuit, based in Richmond, for yet a third time.

The case involves a National Park Service safety officer named William Knox who, in 2000, reported an asbestos problem at the agency's Job Corps Center in Harper's Ferry, West Virginia. In response, the Park Service first tried to fire Knox and, when that proved unsuccessful, cut his pay, transferred him and reduced his duties.

Knox filed a whistleblower complaint under the Clean Air Act. After a 29-day hearing, a federal administrative judge ordered Knox reinstated and awarded punitive damages in the amount of $200,000, one of the highest such awards against a federal agency, citing "outrageous" misconduct by the Park Service in response to Knox's "brave, dedicated and conscientious public-spirited" reports by Knox. That ruling launched a judicial odyssey that will likely continue for several more months.

In 2004, the office of U.S. Labor Secretary Elaine Chao threw out the verdict for Knox on technical grounds. On behalf of Knox, PEER appealed to the Fourth Circuit and won; the case was remanded back to Chao's office for disposition. In 2006, the Labor Secretary found new technical grounds to rule against Knox. PEER appealed and on May 23, 2007, the Fourth Circuit again ruled for Knox and remanded it back a second time.

In its latest action, on August 30, 2007 the Labor Department dismissed Knox's complaint for a third time on new grounds — that the verdict was not supported by the record — that could have been raised by Sec. Chao's staff attorneys years ago.

"Under the Bush administration, a whistleblower must survive the torture of the damned to get justice," stated Adam Draper, PEER staff counsel, who filed the latest appeal to the Fourth Circuit. "Let's hope that the third time is the charm for Bill Knox."

The asbestos problem that Knox exposed at the Harper's Ferry Job Corps Center has still not been fixed, however. Workers, students and members of the public who were and are exposed to friable asbestos have not been examined for adverse health effects. Moreover, none of Knox's supervisors received even a reprimand for their response to the situation.

"Bill Knox's experience is a textbook case of what is wrong with our system for protecting environmental whistleblowers," added Draper. "From the point of view of workers' rights, this Secretary of Labor should be retitled Secretary of Toil and Trouble."

Wikileaks and Internet censorship: a comparative study

Jonathan Werve
Director of Operations,
Global Integrity
19 February 2008, reposted from
The Global Integrity Commons

Using data from the Global Integrity Index, we put a U.S. court's recent order to block access to anti-corruption

site Wikileaks.org into context. In summary: the Wikileaks.org shutdown is unheard of in the West, and has only been seen in a handful of the most repressive regimes. Good thing it doesn't work very well.

Starting in 2007, Global Integrity added specific questions about Internet censorship to the Integrity Indicators, which are a set of 304 questions addressing the practice of anti-corruption in national governments. We have always held that a free and critical media is an essential component of good governance; adding an analysis of Internet censorship was an overdue refinement.

We asked two questions:

1. Are Internet users prevented from reaching political material on the Internet?
2. Are content creators prevented from posting political material to the Internet?

The results of this work are generally encouraging. In examining a diverse group of 50 countries, a majority earn a full score on both counts. Freedom of speech is a widely held right. Moreover, Internet censorship is difficult and is often ineffective in suppressing political activity. Most governments, aside from targeted libel restrictions, don't bother regulating online political speech at all.

The many flavors of Internet censorship

A few countries, however, are deeply committed to trying to make censorship work. On this list in 2007 are Algeria, China, Egypt, Kazakhstan, Russia and Thailand. Each has its own flavor to the repression of online speech — Internet censorship is still in an experimentation phase, and even the most aggressive approaches don't seem to work very well.

- Algeria has no firewalls or filters, but outlaws hosting content critical of the government, and monitors chat rooms for political speech.
- China is home to 1.3 billion people and has a highly scalable technological approach based on extensive content filters known satirically as the Great Firewall of China. China also uses technology to discourage content creation, deploying cute animated police characters (pictured below) to remind Internet users they are being watched.

- Egypt has limited technical means to discourage content creation, so it relies on an old-fashioned technique — harassment, beatings and arrests. Hala Al-Masry used to publish in a blog entitled "Cops Without Boundaries" until the government harassed her, "unknown people" beat her father, and she and her husband were arrested and signed a commitment to shut down the blog. Similar techniques have shut down websites of opposition parties.
- Kazakhstan has little Internet capacity. The government uses this to mask censorship — rather than block sites, it slows them down, frustrating the users of political content into looking elsewhere. The KNB (formerly the KGB) has a special program called Bolat, which slows down, but does not stop, access to sites of terrorist organizations. Popular opinion holds that it is used to slow opposition party sites as well.
- Russia has a mixed bag of state persecution and neglect, allowing a rare opening for free expression in a country with highly restricted media. However, the sophistication of the attacks that do occur is frightening, with hackers singling out individual online targets. For instance, the website of Ekho Moskvy, a liberal Moscow radio station critical of the Kremlin, was brought down by a DDoS [distributed denial of service] attack last year.
- Thailand's military junta moved aggressively to shut down message boards and the formerly-ruling party Thai Rak Thai website after taking over the country in 2006. But the junta's censorship cops work to keep the thinnest appearance of tolerance — message boards were allowed to reopen under the condition that they did not "provoke any misunderstandings." Message received.

So how does the United States fit into this picture?

The court order that muzzled Wikileaks.org (covered here) was prompted not by the government but by a bank registered in the Cayman Islands. The bank used American courts and a compliant domain registrar to scrub the wikileaks.org URL from the Internet. It is extremely unlikely that this decision will stand up in an appeals court, but the larger point is that there is no reason this case should even be fought. Wikileaks should not need a legal team to explain to the courts that the First Amendment requires freedom of speech.

The whole event seems to encapsulate the constant criticism of governance in the United States: that the government has been captured by corporate interests, and that the world-leading rule of law and technocratic mechanisms in place can be hijacked to serve as tools for narrow, wealthy interests.

Online censorship: sounds good, but it never works

While there is much diversity in the style of Internet censorship among the world's worst offenders, one common thread unites them: Internet censorship doesn't work. Cut off one site, and a thousand more pop up. In China, censorship online is sparking criticism that off-line censorship has rarely seen.

So Wikileaks.org went offline, but Wikileaks mirror sites hosted overseas hold the same content, and the original site is still up and running from Sweden (http://88.80.13.160) without its easier-to-type URL. As it turns out, shutting down Wikileaks-the-website has focused our attention on Wikileaks-the-idea, which is spreading at the speed of light.

Whistleblowing and organisational lying

Extracts from David Shulman, *From Hire to Liar: The Role of Deception in the Workplace* (Ithaca, NY: Cornell University Press, 2007).

Subterranean education as diluted whistle-blowing (pp. 111-112)

… people are aware of discrimination, but rather than blow the whistle on discrimination to the press, higher-ups, or internal watchdogs, they blow the whistle to colleagues. Blowing the whistle to colleagues may prevent guilty knowledge from ever being exposed outside the organization, where perhaps real deterrent actions could be taken. Condemnation is attained at a safer cost and contained internally. The pressures to create a remedy are mitigated by stating the "wrongness" of an action to co-workers. Doing so castigates an enemy without initiating external social control. Internal condemnation can displace remedial justice because the teller exhausts moral indignation without initiating an outside disclosure. Guilty knowledge is shared and diffused; subterranean education becomes a means of blowing off steam but not of truly blowing a whistle. In telling the tale, the worker may hope to transfer an obligation for action to the listener, or more likely will look at the act of exposing the behavior internally as fulfilling the obligation to "do something" morally.

However, an upwelling of derogatory information, as it spreads among workers, may lead to retaliatory or remedial action. The ripple turns into a wave. Spreading derogatory information in this way, like political "leaks," may in some cases be a means of building covert support so that when an advocate goes public with the information, a constituency for change has been built. Identifying what factors enable internal whistle-blowing to turn into internal change is a worthwhile pursuit.

Unidirectional social control (p. 128)

Organizational higher-ups dictate the goals of internal policing in the workplace. … Even if a subordinate knows of a superior's transgressions (which may be grievous ones), he or she may not be able to do anything about them except at great risk. After all, whistle-blowing is never called whistle-blowing unless the person whose actions are questioned is a higher-up — top to bottom whistle-blowing does not even exist as an official category.

The hierarchical nature of whistle-blowing reflects the advantages that a high hierarchical position has within systems of one-way social control. If higher-ups act deceptively, they are unlikely to arrest themselves. Getting to position the surveillance camera is a great advantage when you do not want to capture yourself on tape. Lower-ranked employees and colleagues are also unlikely to overtly challenge or report superiors. Unidirectional social control resonates with the criticism left-leaning criminologists offer that crime control efforts center on "crime in the streets" rather than "'crime in the suites." Internal policing and social control efforts in organizations center on hunting the "street crimes" of lower-level workers, not on deviance by higher-ups or administrative patterns within organizations that are clandestine noncriminal deceptions. (p. 128)

Some final thoughts (pp. 172-173)

While writing this book and thinking about particularly acerbic points that respondents made, I sometimes scribbled down private cynical aphorisms about workplace culture, somewhat along the lines of a Dilbert-inspired version of *Poor Richard's Almanac*. My summary reflections bore sardonic fruit, including:

• "My advice for surviving workplace culture: identify what rationalizations your superiors use and then support them to the most craven extreme while in their presence."

• "There is no molehill that some troublemaker doesn't want to make into a mountain."

• "Asking some managers to offer 'constructive criticism' about their co-workers and subordinates is like giving gasoline to an arsonist."

• "Rules are elastic — they bend enough to let powerful people slip by and then snap back into shape to prevent less powerful people from doing the same thing."

• "Telling other people that you are insecure or that you lack confidence is an invitation for them to disrespect you that they will never refuse."

• "The bigger the ego, the harder the fall."

• "When someone in the office urges you to confide in him or her, treat it like a shark asking you to put some ketchup on before you jump into the water."

• "The most persistent research anyone does is always on the subject of colleagues' flaws. Co-workers inventory this information as if they are the most efficient bureaucrats dedicated to a task in the entire world. No defect is too minute to escape notice; no psychological profiling too off-limits. Whatever a person's line of work, they always double as an expert in the character flaws, failings, and inability to measure up of their colleagues. Everybody speaks criticism."

• "Some people flee their responsibilities like vampires avoiding sunlight."

• "Any system that ends up punishing responsibility isn't going to effectively generate it. On a good day, you can interpret this reality as an unintentional misfortune; on a bad day, you can see it as the absolute intention all along. Misunderstanding this is a lie served by the notion that managers have an open-door policy and that one should come forward if there are alarms to sound. Just because you invite people to put their heads on the chopping block doesn't mean that they are stupid enough to accept your offer, especially after they can see the head of the last person who did rolling down the floor."

• "The problem isn't being paranoid — it's going public with your suspicions."

• "Bitter, seething resentment is the proverbial elephant in the room of professional relations."

Letters, reviews, articles

Dear members of Whistleblowers Australia,

A rather belated thank you all for the certificate of Life Membership. It now hangs on the wheelhouse bulkhead of my riverboat.

It is the second life membership bestowed upon me and follows my mother's effort in 1935.

Most often as the phantom member absent from meetings, I should deserve the recidivist delinquent award and so under my photo in *The Whistle* No. 40 I have appropriately printed "you prick."

There are two Whistleblowers Australia matters which trouble me, the first being the limited opportunity for wide public recognition to a number of members who, at financial and emotional cost, give of themselves tirelessly and largely unseen to fellow whistleblowers and the wider public. Some of us know who they are and they deserve community acclaim. Bruce Hamilton is but one who is inconspicuous and comes to mind.

During my life of now seventy-odd years I have had only two mentors. One received a deserved citation for service to the nation; the other, even more deserving, will probably never receive the same due to his protestations against bureaucratic injustices and facilitating governments. I refer to Keith Potter who, evidenced by the high quality of his prolific and consistent written material in support of others, has shown compassion, tenacity and stamina beyond anything in my experience or imagination.

That a citation in public recognition evades such people as Keith is, to me, frustrating indeed. The inadequate measure of success for such effort in terms of government acknowledgement or correcting a wrong is indicative of public service administrative cussedness.

In matters of public service interest, the government is subservient to a cosy relationship cementing ministerial pensions. There is never going to be a citation conferred upon any person who would disturb that.

It is also a frightening reminder that repugnant regimes the world over could never develop without compliant senior public servant administrators in the first place.

Sadly, those type of people are to some degree recognisable today and are amongst us in the public service and judiciary as they were in early Nazi Germany and history beyond.

Keith Potter was not originally a typical whistleblower and this has made him unique. He stepped out of the public service mould and registered a protest against administrative immorality. In particular he was focused upon what was happening to me then, and a long time hence.

Inevitably, he has become a whistleblower in furtherance of his resolve to assist not only me but others as well. As with most of us, Keith has been punished and, consequently, so too has his very supportive wife Betty — punished instead of praised by people in high office enjoying false esteem.

Now the second matter which troubles me has just escaped my memory so I'll work on recall for another time and that too is also troubling me! I know I'm losing "it," so would that make me smarter than those who don't know?

I'm currently living on the Murray River practising to be a hermit. Any of you are welcome to call on me for a cup of tea or a feed of rabbit, fish or wild pig in season. Cheers!

Bill Toomer
M. V. "Gunbower"
Box 63, Wedderburn Vic 3518
0428 943 431

In the early 1970s, Bill Toomer blew the whistle on violations of quarantine regulations in shipping.

(***Editor's note*** *In the January issue I invited comment about whether to run articles that have a partisan angle during an election campaign.*)

Just read *The Whistle* and see you are asking for comments re the Piers Akerman article. Akerman's article was fair dinkum to all who knew about Rudd's association with the Heiner case.

I have absolutely no objection to persons writing articles in the lead up to an election if they are factual. This could be ascertained either by the editor doing a little research or by the editor adding a disclaimer to such articles. Your choice.

I say let the editor continue to run articles during an election campaign as the public and the membership should be appraised on any information so they can make an informed vote when the time comes.

Keep up the good work. I appreciate *The Whistle* even if I do not attend meetings.

Alastair Browne

BOOK REVIEW

The Courageous Messenger

Reviewed by Brian Martin

Karen is about to see the boss about a stuff-up at work. She worries, "Will I be blamed? Should I just keep quiet and let the problem get worse?" How can Karen decide the best way to proceed?

When the news is bad, it takes courage to be a messenger. There's a risk involved in telling the boss about a problem, or reporting it to outside agencies. Are there ways to convey the message more carefully, sensitively and persuasively? How can Karen learn the skills to be an effective messenger?

A lot of us would like to know the answer, because it might mean a lot less grief for whistleblowers. Persuasive communication won't always be enough: in some situations, Karen will become a target no matter how skilled she is. But some traumas and disasters might be avoided if whistleblowers knew how to convey their message more skilfully.

To learn the skills, it's worthwhile consulting the book *The Courageous*

Messenger, whose subtitle is *How to Successfully Speak Up at Work.* Its three authors are organisational consultants. The book is a step-by-step guide to talking to the boss with a message that may be unwelcome.

They start with the elements needed to make a decision. They tell how to figure out your true message and what motivates you, assess the risk involved and understand possible reservations — and then make a decision.

Each one of these elements has components. For example, the authors give a useful set of steps to assess the risk involved. The first step is to identify possible repercussions. Next is to spell out the evidence for these repercussions. Is it direct experience (previous reprisals experienced or what you've personally seen happen to others), or what someone told you, or just things you're imagining might happen? Were these reprisals from the same person you're planning to speak to, or someone else? The next step is to note when these events occurred. If they're recent, the risk is higher. Next, you check how similar your situation is to the previous ones. Is the workplace situation much the same? Then the risk is higher. Finally, you put together all these assessments to see whether the repercussions are likely this time.

Making a decision about becoming a messenger is just the first step. Next is conveying the message, namely talking to the boss. This has a similar number of elements, including preparing for the meeting, opening the conversation, presenting your views and explaining your reasons, talking with the receiver (the boss), finishing the conversation and following through afterwards. That's a lot of attention to a simple conversation! Except that a conversation is rarely simple: your choice of words, your tone of voice, your response to objections and much else can make an enormous difference to the outcome, sometimes the difference between reaching agreement and things becoming much worse.

The authors encourage readers to consider becoming more skilled at being courageous messengers. Improvement comes from regularly conveying delicate and challenging messages and learning the lessons of this experience by reflecting on what worked and what didn't. The authors' goal is organisations in which courageous messengers are unnecessary because speaking up is routine.

Amazingly for a book on this topic, there is not a single mention of whistleblowing. There are many illustrative stories, hypothetical but realistic. One is of an employee not doing her share of the work. Another describes a boss who doesn't like to confront conflict and therefore unfairly moves a worker to a different project. Even in the chapters dealing with "tough cases," in which speaking up is more challenging, the difficulties are about the boss's personality, the relationship between the messenger and the boss, or the sensitivity of the topic. There's no mention of corruption.

Although the neglect of whistleblowing is a major omission, *The Courageous Messenger* is worthwhile because of its systematic, thoughtful approach to communicating potentially unwelcome messages. If more workers could develop the skills involved, workplaces would operate more smoothly and perhaps a few more workers could avoid serious reprisals for speaking out.

Kathleen D. Ryan, Daniel K. Oestreich and George A. Orr III, *The Courageous Messenger: How to Successfully Speak Up at Work* (San Francisco: Jossey-Bass, 1996).

Brian Martin is Vice President of Whistleblowers Australia and editor of *The Whistle.*

BOOK REVIEW

Trial by Trickery

Reviewed by Peter Bowden

Trial by Trickery is an account of the arrest and trial of Scott Watson for killing two young people, Ben Smart and Olivia Hope, in the early hours of January 1, 1998. Watson, currently serving a life sentence, went to trial for committing the murders on his boat *The Blade,* in Marlborough Sounds in New Zealand. The author Keith Hunter maintains that Watson is innocent. Hunter has waged a long campaign to instigate a retrial, including the mounting of a TV program on New Zealand One in November 2003, *Murder on the Blade?* Hunter's book is one of several making the claim that there is extreme doubt on Watson's guilt.

The interest to whistleblowers of this book is the claims it makes about the honesty of the police force in investigating a criminal action when it is so easy, as in Watson's situation, to mount a case against an obvious suspect with a prior criminal record. A second concern is the reliability of the judicial system where the evidence is entirely circumstantial and the police have been able to prejudice jurors and witnesses and even, in this case, the trial judge, by the prior leaking of information detrimental to the accused.

A third area of concern is Hunter's strong case for trials of this nature to be conducted by judges trying to find out what happened rather than by a trial by jury with two opposing lawyers, the system that we now have.

Hunter has presented an extremely detailed series of arguments to support his contention that the arrest and trial of Watson is suspect. He lays out numerous instances where the police publicly state that they had no suspect, yet surreptitiously released information that Watson was their man, about his "long history of violence", that he had an incestuous relationship with his sister, about the doubts on various identifications. The insinuations, all of which were disputed by Hunter, "travelled well beyond the journalists into the public at large, and even into the judiciary" (p. 21).

The statement by police that they had no suspect subverts the requirement that no public information be given out that may prejudice a trial. Australians are familiar with a recent application of this *sub judice* rule in the recent decision by Judge Betty King of the Victorian Supreme Court to ban the doco-drama *Underbelly* on the basis that it might prejudice jurors in an upcoming gangland murder trial.

The question as to why the NZ police should want to leak information against Watson is presumably so that the arrest would come quickly and the police would appear efficient. Or perhaps that they simply believed him guilty. It is certainly true that large numbers of police were involved in

releasing various pieces of information. New Zealanders pride themselves on the honesty of their police. They wear no guns, but also have had until recently no code of conduct, and no effective integrity commission where police unhappy with the conduct of colleagues can blow the whistle.

The question as to the role of the prosecutors is also raised. The book makes a strong argument that the prosecutors twisted the evidence as strongly as possible towards a guilty verdict, even to the point of misquoting some evidence, and ignoring other evidence helpful to Watson. I was very surprised to read that, even in the legal profession, disputes exist on whether the purpose of the public prosecutor was to obtain a conviction rather than present the evidence against the accused fairly but honestly. He also points out that the accused was defended by legal aid whereas the prosecution had the full resources of the state at its disposal. A fair trial with adversarial legal teams requires competence and full resources on both sides.

The trial judge, Herron J, granted the police application to bug Watson's parents and sister on the basis of their statements against Watson that were extremely negative. These accusations were made despite the police announcements that they had no suspect. Hunter makes a convincing case that Herron's summing up to the jury was imbalanced as a result.

The case is still very topical. A search for Scott Watson in Google will show that the police are still defending their actions. The *New Zealand Times* has just carried a complete review of the evidence, which came to the conclusion that a re-examination of the Watson case is necessary. The local media also report that Watson's life in prison has not always been exemplary. It would appear that the New Zealand media, and therefore presumably the country, is not fully convinced that Scott Watson was guilty. But the groundswell and the petitions, perhaps due to the negative image of Scott Watson, are insufficient to change the opinions of the authorities.

This raises the issue whether the decisions of a country's legal system should be influenced by public opinion.

Keith Hunter, *Trial by Trickery: Scott Watson, the Sound Murders and the Game of Law* (Auckland: Hunter Productions, 2006).

Dr Peter Bowden is president of the NSW branch of Whistleblowers Australia, lecturer in ethics at the University of Sydney and a member of the Executive Committee of the Australian Association of Professional and Applied Ethics.

Miceli and Near on blowing the whistle

Brian Martin

At the Whistleblowers Australia conference in November, there was considerable discussion of the "Whistle While They Work" (WWTW) research project led by AJ Brown at Griffith University. Members of the Whistleblowers Australia national committee have been exchanging many emails about the research. One of the key issues has been the frequency and severity of retaliation against whistleblowers. According to preliminary results of the research, only a minority of Australian public service whistleblowers report reprisals. Yet most whistleblowers who contact Whistleblowers Australia have suffered reprisals, often quite severe. Is there any discrepancy involved here?

One explanation for the difference is the definition of whistleblowing used in the WWTW research, said to be based on the definition by Miceli and Near. Therefore, it's worth spelling out how Miceli and Near define whistleblowing and what they say about reprisals.

Marcia Miceli and Janet Near are US-based researchers who, in collaboration with Terry Dworkin, have written a large number of articles about whistleblowing. Here, I'll focus on a key book: Marcia P. Miceli and Janet P. Near, *Blowing the Whistle: The Organizational and Legal Implications for Companies and Employees* (New York: Lexington Books, 1992). The authors say "This is the first book on whistle-blowing that describes and integrates the scholarly literature so it can be understood by a wide variety of readers" (p. xvi). In other words, it deals with research findings but explains them accessibly.

Drawing on their earlier work, Miceli and Near define whistleblowing as "the disclosure by organization members (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action" (p. 15). The book, after introducing the idea of whistleblowing, presents a model of whistleblowing and its consequences, assesses whether whistleblowing is affected by personality and situation factors, examines the consequences of whistleblowing (including retaliation), looks at legal approaches to whistleblowing (in a chapter contributed by Terry Dworkin), and spells out some implications for practice. In looking at the consequences of whistleblowing, the authors consider both whistleblowers and the organisation.

Miceli and Near comment on methods of researching whistleblowing. They note that there are books based on accounts by whistleblowers.

> While such treatments often provide fascinating reading, they suffer from serious shortcomings. First, well-known cases (or those identified through word-of-mouth referrals) typically comprise the majority of cases examined in such books. But they may not be representative of all or even most whistle-blowing attempts. To the extent that this is true, several problems result. What appear to be common characteristics of whistle-blowing cases may in fact be uncommon, or common only to the most dramatic of cases. For example, while many authors report that severe retaliation is practically inevitable (for instance, Shepherd, 1987b), more carefully controlled survey research of a random sample of organization members (as in MSPB, 1981, 1984) suggests that retaliation in any form is perceived by less than one-quarter of the whistle-blowers surveyed, and that severe retaliation is experienced by a small subset of these persons. We hasten to emphasize that this should *not* imply to the reader that retaliation is an insignificant issue. It should be noted that the surveys

> to date have been conducted in the federal sector and that persons who left the government, as well as persons who have never worked in that sector, were not included. However, these findings suggest that retaliation is much more likely under certain circumstances than under others, and that by examining a small subset of cases, researchers may gain richness and depth with respect to some cases but may lose perspective on the entire population of whistle-blowing incidents. (p. 40)

Later in the book, Miceli and Near look at "retaliation as an outcome variable." After describing some of the difficulties in defining retaliation, they comment on its incidence:

> A point related to the problem of defining retaliation is that estimates of the overall incidence of retaliation vary dramatically. While case studies of whistle-blowers popularized in the media present the impression that all whistle-blowers suffer extensively, survey research from somewhat larger and more diverse samples suggest that the rate of retaliation is much lower, probably less than 20 percent (Near, Dworkin & Miceli, in press); of course, the rate of retaliation probably varies widely across cases of whistle-blowing, so that even attempts to produce generalizable results from reasonable samples of whistle-blowers may be flawed. One of the methodological problems here makes the question particularly agonizing; while we would certainly hope that the incidence of retaliation remains small, this creates difficulties, too, because only in the largest samples can enough whistleblowers who have suffered retaliation be identified so that we can begin to characterize their experiences reliably. (p. 203)

In their final chapter, Miceli and Near discuss implications for practice. They have this to say about avoiding retaliation.

> Many authors of anecdotal cases and studies of whistle-blowers who were nonrandomly selected (for example, Soeken & Socken, 1987; Parmerlee et al., 1982) agree that retaliation is both likely and severe. But comparative survey-based studies of large samples of randomly selected whistle-blowers and other organization members show that retaliation occurs in a small proportion of cases and it generally takes the form of more subtle harassment than firing or physical threats (for example, Graham, 1983; Miceli & Near, 1989). Thus, we must disagree that retaliation is inevitable; more likely, the whistle-blower and his or her complaint will be ignored. It is also unclear whether blowing the whistle anonymously will be advantageous in every situation. Some complaint recipients may not be trustworthy and may reveal a confidence; others may refuse or be unable to follow up on a complaint if they cannot identify the complainant.
>
> However, the advice that whistle-blowers attempt to retain the support of supervisors and management appears sound. The pattern of results is quite clear. Whistle-blowers are more likely to avoid retaliation if they have support from top and middle management. Unfortunately, this assessment was provided after the whistle-blowing occurred, so we have no way of knowing how many organization members who enjoy management support lose that support when they blow the whistle; probably this varies with the individual case, so our best advice is for would-be whistle-blowers to be aware of the problem and try to take proactive actions to maintain their managerial support throughout the course of the whistle-blowing process. (pp. 305-306).

In the concluding paragraph to *Blowing the Whistle,* Miceli and Near say "there remain a great many questions of practical and theoretical importance concerning whistle-blowing" (p. 308). That remains true today.

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WBA conference and AGM, 2008

Whistleblowers Australia's 2008 conference and annual general meeting will be held on Saturday-Sunday 6-7 December at University College, University of Melbourne.

University College is located in Parkville, on the corner of College Crescent and Royal Parade, 10 minutes from Melbourne's CBD, 5 minutes from Lygon Street and 25 minutes from the airport. The conference venue can be viewed at www.unicol.unimelb.edu.au; follow the link to the conference.

Accommodation for the conference can be arranged directly with University College, University of Melbourne for the nights of Friday December 5 and Saturday December 6. A bed and breakfast rate of $47 per person (college room with shared bathroom) or $57 per night (room with ensuite) will be offered to conference participants.

Tentative programme for Saturday 6 December.

"Australia's Forgotten Generation: Its Whistleblowers"
8.30, Registration
8:55, Opening
9.00, Session 1: The Cold Cases of Whistleblowing
10.15, Morning Tea Break
10.30, Session 2: Whistleblowing Legislation
12:30, Lunch
1:30, Session 3: Your Right to Know
3:00, Afternoon Tea Break
3.15, Session 4: Whistleblowing and the Private Sector
4:30, Session 5 Whistleblowing and Bullying
5:45-6:00, Conclusion

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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