

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

# The



# Whistle

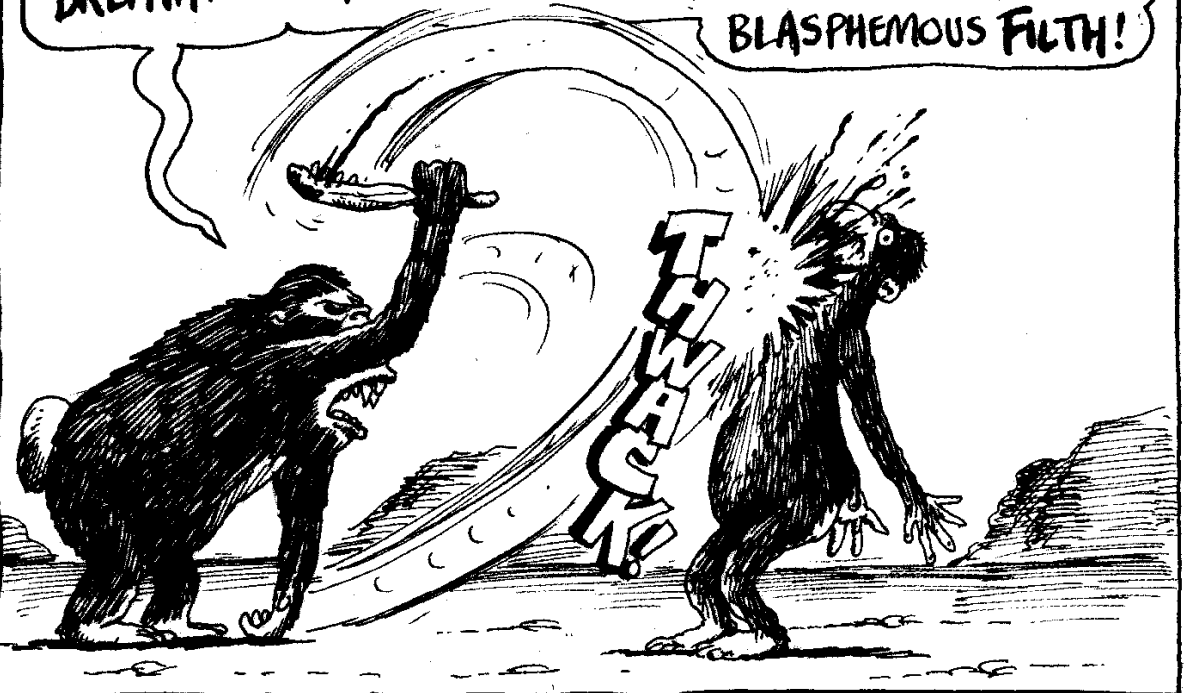
NO. 55, JULY 2008

Newsletter of Whistleblowers Australia

**SHARPENING  
THE  
SWORD**  
By  
Martin  
Rowley

Index on Censorship: 3 million years ago....

I DON'T KNOW WHY YOU WHINGEING AUSTRALOPITHECENE DISSIDENTS DON'T SAVE YOUR BREATH! EVERYONE KNOWS THAT EVOLUTION IS UNPROVABLE BLASPHEMOUS FILTH!





and 170km south of Tennant Creek, have signed a petition in support of teacher Robert Bartholomew, who has blown the whistle on the Northern Territory's crumbling education system, which he says is dooming the future of Aboriginal Australia.

Dr Bartholomew, an American sociology professor who has lived in Australia for 13 years, has been working as a teacher in remote schools for several years.

He told *The Weekend Australian* that walking into the Alekarenge School was like entering the Third World. Conditions were so bad that only one of six teachers who started at the school at the beginning of this year made it through to the second term.



Alekarenge Community Education Centre

As the school year began, none of the computers were working, there was no working photocopier, chaos reigned in classrooms as children turned up for school and then left after an hour, and scores of dogs and even a donkey roamed the playground.

The animals, which licked the water bubblers, were beaten with sticks and pelted with bottles by students.

It was the discovery of a 2005 report that identified an asbestos risk to children and teachers within the playground and inside the school that particularly alarmed the community. According to Dr Bartholomew, the asbestos report and all of its recommendations were ignored by the Education Department. This has been strenuously denied by the department, which said all of the recommendations had been implemented.

"We can confirm that the asbestos status at Alekarenge School is safe for staff and students," a department spokesman said. Northern Territory Education Minister Marion Scrymgour is under increasing pressure over the state of remote education. This week,

she admitted the situation in remote schools amounted to a crisis.

In Ali Curung, Dr Bartholomew agrees. "This is a microcosm of remote schools in Australia," he said. "And it is nothing short of a national disgrace."

Ms Scrymgour told *The Weekend Australian* yesterday that the Government was working towards increasing teacher numbers in the Territory, currently recruiting 50 of the 200 extra teachers promised by the federal Government. Federal Education Minister Julia Gillard said the Rudd Government was concerned about the 2000 children of school age not enrolled in the Territory's school system. A further 2500 did not attend school on a regular basis.

"This situation must change," Ms Gillard said.

The Education Department yesterday denied there were chronic teacher shortages at Alekarenge School. A spokesman said four teachers, not five, had left the school: two to take up promotional positions, one on maternity leave and one following her partner to his new job in a different community.

Though no performance issues were ever raised against him, Dr Bartholomew said that after weeks of raising concern about education and safety standards within the school, the department told him he would be transferred to a different school. "I was told my standards were too high," he said.

The transfer never happened and, despite having successful interviews at other schools, he has not been able to get a job and believes he has been "blackballed" by the department. He is now technically an illegal immigrant.

Former colleagues of Dr Bartholomew, including school principals, spoke of him as a model teacher.

The Australian Education Union's Northern Territory branch secretary, Adam Lampe, said Dr Bartholomew had been treated with contempt.

## Watchdogs are a joke

Michael West

<http://business.smh.com.au/watchdogs-are-a-joke/20080414-25xy.html>

14 April 2008

The regulators have just become defendants.

Opes Prime had warned both the ASX [Australian Stock Exchange] and ASIC [Australian Securities and Investments Commission] in February that it was in breach of its liquidity requirements. Both failed to act. Any client of Opes whose exposure to the collapsed Prime broker increased between that time — at the latest — and the collapse in March presumably has an action against the regulators.

ASX supervision boss Eric Mayne should fall on his sword immediately. ASX chief executive Robert Elstone should, in the least, consider his position. The Government moreover should now move to strip the ASX of its supervisory powers. Its dual role as a profit-driven company and market supervisor has become a joke.

Thousands of company directors across the country have been personally and professionally affected by the collapse of Opes and Lift Capital. They cannot possibly take the ASX seriously, and they have to report to it. Legions of investors likewise — they have to believe in it.

If the regulators were this sloppy on a basket case of Opes dimensions, every market participant must now ask: what is next? While the ASX has been busy booking its billions in bullmarket profits, what other brewing disasters is it missing?

The growing ranks of Opes class action plaintiffs looking for deep pockets to sue (Opes directors won't cover it and the ANZ and Merrill Lynch are already in the lawyers' crosshairs) may even join the ASX for earlier oversight.

It appears that the ASX did a site visit of Opes last October and failed to identify any irregularities, or if it did, did nothing about them. Worse, according to one report, Opes was encouraged by ASX to exploit a loophole which allowed the collapsing prime broker to funnel \$1.3 billion in liabilities to a company which did not require an AFS (Australian Financial

Services) licence. ASIC, the supposed corporate watchdog knew this.

This reporter is no fan of excessive inquiries, but the abject failure of the regulators probably means there should be a government inquiry into Opes et al. This is a systemic failure. By all accounts there are more collapses to come and the sheer patheticness of the regulators simply cannot pass.

ASIC in its present form should also go. Confidence is gone already.

Even if these two watch-poodles could not prevent the Opes collapse, they were still found wanting when it happened, ensuring total chaos prevailed as hundreds of companies struggled to meet disclosure requirements, Tricom ripped its shares out of the Opes pool with the connivance of the ANZ bank, the courts were forced to handle angry Opes litigants and it was left to the media to speculate on unfolding events as investors foundered in the dark.

All the while the ASX and ASIC did not even have the guts to summon a press conference. Even Mick Gatto and the Melbourne underworld put on a better show.

For week after week, reporters from every serious media organisation have been in touch with the ASX and ASIC wanting to know what was being done. They have been stonewalled at every turn and now it turns out that the regulators had the chance to do something earlier.

This PR approach of working against the press and the public to save your skin and hope that things blow over has backfired. They have lost control, they have lost confidence, they require urgent repair.

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## Uni “damaged” over lecturer’s demotion

Matthew Burgess and Clay Lucas  
*The Age*, 20 May 2008

The University of Melbourne’s reputation for upholding academic freedom has been damaged by the demotion of a senior lecturer after a complaint against him by the State Government, the tertiary union says.

*The Age* revealed today that Paul Mees, a senior lecturer in transport

planning and a prominent public transport advocate, was told his pay would be slashed after he made a strongly worded attack on the Government over transport privatisation.

In the attack, made at a public forum last year, Dr Mees said the authors of a 2007 report on privatisation were “liars and frauds and should be in jail.”

Documents obtained by *The Age* showed that one of the university’s reasons for acting against Dr Mees was a concern about its relations with the Government.

In a statement issued today, the National Tertiary Education Union said the University of Melbourne’s reputation and standing as an institution upholding the highest standards of intellectual rigour and academic freedom had been damaged by its handling of the issue.

The statement says the university, in its own collective agreement, committed itself to “upholding the scholarly values of intellectual freedom, honesty, openness and rigour, consistent with the university’s vision” and defined intellectual freedom as “the freedom of academic staff ... to engage in critical inquiry, intellectual discourse and public controversy without fear or favour, but does not include the right to harass, intimidate or vilify.”

“The commitments of the university as stated in their collective agreement do not state that these values are contingent on not upsetting Government funding bodies,” union state secretary Matthew McGowan said.



Paul Mees

“Yet, the basis of the university’s investigation into Dr Mees’ case was to determine if he had damaged the reputation of the university.

“If the university’s view is that Dr Mees is vilifying the department, then they cannot assess his conduct without examining the validity of his claim or the basis of his belief in the allegations, which is something the investigation specifically ruled out.”

Mr McGowan said “universities must stand up for the right of staff to engage in robust debate against the pressures placed on it by funding bodies.”

“The fact that it is a Government department applying the pressure makes this an even more insidious example of their failure to meet the test they themselves have applied through their collective agreement,” Mr McGowan said.

In a letter to the Government on October 23, Professor Nick Low of the university’s transport research centre wrote that Dr Mees’ remarks were “directly contrary to our wish to conduct our relations with the State Government in a spirit of partnership and collaboration.”

Dr Mees, a former president of the Public Transport Users Association, made his remarks on August 23 at a university forum on the privatisation of Melbourne’s public transport.

He told the forum that figures in a report by then director of public transport Jim Betts on the results of privatisation were deliberately misleading.

About two months later, Mr Ronaldson complained in writing to Melbourne University vice-chancellor Glyn Davis and to Professor Low.

Mr Ronaldson demanded Dr Mees’ speech be removed from the university’s website.

A podcast of the speech was immediately removed.

Without telling Dr Mees, the university also launched an investigation into whether he had damaged the university’s reputation.

The inquiry, conducted by Michael King of Monash University’s law faculty, found Dr Mees had “brought the university into disrepute by making derogatory and insulting comments” about Government officers.

In the report, Professor Low is quoted saying the Government “had had enough of Dr Mees’ over-the-top remarks and [wanted him] reined in.”

Professor Low has been in negotiations with the State Government over funding a research project into greenhouse gas emissions from transport.

Mr Betts has agreed to be a partner in the application for funding.

Dr Mees has since quit the university, and will give his final lecture next week. He has accepted a role with RMIT's planning department.

Dr Mees has also appealed against the university's finding against him, and is planning to sue the university over the way it conducted the investigation, and "for charging me with misconduct over being a whistleblower."

The university told Dr Mees his pay would be cut from \$96,000 to \$88,000 a year after it investigated the Government's complaint.

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## University admits error over forced Gardasil apology

ABC, 7.30 Report, 15 May 2008

Kerry O'Brien: The University of Queensland has admitted it may have overreacted when it asked one of its senior lecturers to apologise to the pharmaceutical company CSL.

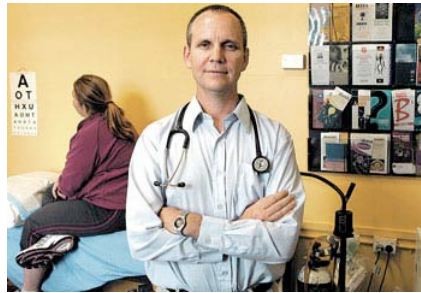
The university rebuked Dr Andrew Gunn after he made comments on ABC Radio that were critical of the marketing of the anti-cervical-cancer vaccine, Gardasil.

The university is in partnership with CSL to develop Gardasil and it argued Dr Gunn should have made it clear he was making a personal opinion that was not in line with official university policy.

The incident raises questions about how universities tread a fine path between commercial enterprise and academic freedom, as Peter McCutcheon reports.

Peter McCutcheon, reporter: Dr Andrew Gunn may look like your average suburban GP, but he's managed to upset big business and a leading university by criticising the marketing of a well known pharmaceutical. He's found himself at war with university administrators, who have asked him to say sorry.

Will you apologise?



Andrew Gunn

Andrew Gunn, general practitioner: No, I'm not going to be apologising, no.

Peter McCutcheon: And some of Dr Gunn's colleagues are asking why the University of Queensland was so keen to please its corporate partner.

Wayne Hall, science ethicist: Unless the university clarifies its policy on this, I think there may be academics who'd be more reluctant to speak out than they would before.

Peter McCutcheon: An undoubted Australian science success story seems an unlikely starting point for a dispute over academic freedom.

Gardasil, developed by the University of Queensland in collaboration with the drug company CSL, prevents strains of the human papilloma virus, responsible for cervical cancer, and is distributed around the world.

These sorts of commercial partnerships are becoming more common in Australian universities.

Richard Larkins, Universities Australia: Well, it's a highly desirable outcome. It's of benefit to the universities, it's of benefit to the companies and it's of benefit for community.

Peter McCutcheon: But Dr Gunn using his titles as editor of *New Doctor* and senior lecturer in general practice at the University of Queensland touched a raw nerve with a thought piece on ABC Radio National about the marketing of drugs, with a passing reference to Gardasil.

Andrew Gunn: Qualms about Gardasil initially seemed unpatriotic. Misgivings are now common, and include its cost, the incorrect and dangerous perception that it might make Pap

smears unnecessary and the difficult question of the best age to give a vaccine whose effect might yet prove to wear off.

Peter McCutcheon: Did you expect any controversy at the time?

Andrew Gunn: To be honest, no, no, I didn't think so, I didn't think I'd really stuck my neck out at all.

Peter McCutcheon: But CSL clearly believed he had stepped over the line and complained directly to the university's top administrator, secretary and registrar Douglas Porter, who in turn wrote to Dr Gunn.

(Reading from the letter to Dr Gunn)  
"At no time in the interview did you state that your comments made in relation to Gardasil were made in your personal capacity and did not represent the views of the university.

"I hope that you agree that the appropriate action for you to take would be to provide a written apology to CSL Limited."  
(End excerpt)

What was your reaction when you received that letter?

Andrew Gunn: Ah, well I was both surprised and I guess I was a bit angry as well.

Peter McCutcheon: Researcher in science and ethics at the University of Queensland, Professor Wayne Hall dismisses an argument the university has since made in correspondence that Dr Gunn was a special case because he's not a paid staff member and his academic title was bestowed on him for supervising medical students undertaking clinical practice.

Wayne Hall: Well, that creates large problems because say, for example, in this faculty that I'm in, health sciences, there'd be probably more people who have adjunct appointments than are formal members of the university.

Peter McCutcheon: The University of Queensland's vice-chancellor and registrar declined an invitation to appear on the 7:30 Report, but the University did issue a statement.

(Reading from a statement from the University of Queensland)

“The University acknowledges that its action in writing to Dr Gunn may have been disproportionate to the circumstances.

“If Dr Gunn does not agree that an apology is appropriate, then the University will not pursue the issue.”

Richard Larkins: I think the individual, a general practitioner and senior lecturer, would regard himself as speaking in an area of expertise, whereas CSL may have regarded his comments as exceeding or going beyond his immediate area of expertise.

That’s somewhat debatable.

Peter McCutcheon: Chair of Universities Australia Professor Richard Larkins described the UQ Gardasil partnership as a great success story and argues Australian universities generally handle these relationships very well.

Richard Larkins: There’s some issues around principles which are pretty clear cut. The actual decision about some of those principles has been a little bit clouded. Because often they are shades of grey, rather than black or white issues.

Peter McCutcheon: Dr Gunn is continuing his supervisory work at the university and is pleased administrators have now dropped the matter.

The university says it’s reviewing the rules under which academic titles can be used by externally funded health professionals. But some academics remain concerned.

Wayne Hall: I don’t have a problem with the increased private funding but I think we do have to have clear rules on the right of academics to speak out, even on topics which may be the disadvantage of the university from a financial point of view.

Andrew Gunn: There’s a small personal issue for me but there is a much bigger issue of how universities are funded and what kinds of pressures are put on the people that work there.

## Disabled residents forced to share razors, soap

PM (ABC Radio)

Friday, 9 May 2008, 18:35:00

<http://www.abc.net.au/pm/content/2008/s2240615.htm>

Mark Colvin: A secret report has upheld a Queensland whistleblower’s allegations that disabled people, including one with hepatitis, have been sharing razors and soap at a state government disability home.

The Ombudsman’s report, obtained by PM, also found that a resident might have been locked in his room while staff slept and that drugs found at the facility were out of date or unauthorised.

More serious allegations involving starvation and punishment could not be substantiated.

The whistleblower’s father says that’s because the department responsible led investigations into those allegations.

The department, Disability Services Queensland, has defended its operations, while also promising to carry out all the Ombudsman’s recommendations.

Annie Guest reports from Brisbane.

Annie Guest: The most shocking of the allegations was that staff starved a 50-year-old intellectually disabled man who later died.

Peter Hamilton: Well the most significant word in it all would be just starvation. This is just horrifying, it’s something that you just don’t expect in this day and age.

Annie Guest: Peter Hamilton is the father of the whistleblower, a state government employee who can’t speak publicly.

He says carers punished the moderate to profoundly intellectually disabled residents at the Loganlea Service Centre, south of Brisbane.

Peter Hamilton: If they were going to be a trouble during the night, they would be locked out of their houses.

Annie Guest: Your daughter, the whistleblower, was a manager who

worked during the day. How did she know this was going on at night?

Peter Hamilton: It came from a certain group of the staff there. It wasn’t all the staff there that had this mentality.

Annie Guest: There are allegations of staff sleeping and residents inappropriately sedated and left lying in faeces.

Peter Hamilton: They wanted to sleep through the night, the best way for them to achieve that was to sedate their patients. In some cases they were put to bed at 4:30 in the afternoon and they would get up sometimes at 10:00 the following morning.

Annie Guest: The 36-page Ombudsman’s report found some evidence of staff sleeping, but dismissed allegations residents were inappropriately sedated and starved.

It says some may have been locked in or out of rooms, but with innocent explanations.

Allegations that razors and soap were shared between residents, including one with hepatitis, were confirmed in the Ombudsman’s report.

Ombudsman report: The failure by Disability Services Queensland to ensure adequate care was given to the management of personal hygiene products at the Loganlea Centre to control cross-infection risks is unreasonable.

Annie Guest: The whistleblower’s accusations surrounding staff hoarding out-of-date drugs to take home or improperly give residents, and that drugs were hidden in a car boot during an audit, were not substantiated.

But the report did find inadequate drug policies and procedures.

Ombudsman report: The presence of a large quantity of out-of-date or unauthorised medication on the premises of the Loganlea Centre constituted unreasonable and/or wrong administrative action within the Ombudsman Act.

Annie Guest: The Ombudsman made recommendations about hygiene, drug policies and staff support.

The Minister for Disability Services Lindy Nelson-Carr declined a request for an interview, with a spokeswoman saying the Minister hasn't yet seen the report, dated the 8th of April.

Her department, Disability Services Queensland, also declined requests for an interview.

But the director-general, Linda Apelt, has released a brief written statement.

Director-General's statement: Implementation of the recommendations has commenced and a progress report will be provided to the Ombudsman mid-year.

Annie Guest: Meanwhile, the Ombudsman's report dismissed claims that staff were directed to lie to auditors, and that they may have stolen from the intellectually disabled residents and deprived them of toilet paper.

It also dismissed some procedural concerns.

But Peter Hamilton says that's because the bulk of the investigation was delegated to departmental officers.

Peter Hamilton: We've already seen the level of care. How can they make adequate judgements?

Annie Guest: In her written statement, the director-general Linda Apelt denied this allegation.

Director-General's statement: Any suggestion that the department played any role in the investigation's findings in this report is incorrect. The Ombudsman investigated all matters and reached all conclusions that were made in this report.

Annie Guest: Along the way there have been several bullying and other complaints both by and about the whistleblower.

Her father Peter Hamilton again.

Peter Hamilton: I am very upset with the way the department has treated it.

Annie Guest: Has it been worth it, do you think? Raising the concerns for her?

Peter Hamilton: Absolutely.

Annie Guest: Why is that?

Peter Hamilton: Something had to be done.

Mark Colvin: Peter Hamilton, the father of the whistleblower, ending that report from Annie Guest.

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## Odd to fear watchdogs, as bark's worse than bite

Richard Ackland  
*Sydney Morning Herald*,  
18 April 2008, p. 15

Isn't it peculiar that governments in South Australia and Tasmania are stoutly resisting cries for permanent corruption commissions to be established in those sainted states?

It scarcely seems credible that they should resist such a terrific suggestion. A glance at the NSW model of corruption fighting should be enough to put any besieged government entirely at ease.

The Tasmanians have just seen firsthand how governments fiddle the judicial selection process to punish those who offend the party line. Simon Cooper, the head of the state's planning appeals tribunal, was kyboshed by dark forces at the top of the Premier's department for appointment as one of the state's 12 magistrates.

Five months before the then attorney-general, Steve Kons, signed off on a cabinet submission for the appointment, Cooper had written to the Premier's people to say Gunns's proposal for a pulp and pollution mill remained critically deficient.

Goodnight, Cooper. No job on the magistrates' bench for you.

There were calls for a permanent corruption body for Tasmania when it subsequently emerged that Kons had lied to Parliament in denying Cooper's appointment had been nobbled.

The current Attorney-General, David Llewellyn, came up with an ingenious idea: you do not need a corruption fighter because the Director of Public Prosecutions could receive and investigate all allegations of official wrongdoing from "any person."

The DPP, Tim Ellis, was over the moon about that one, and said something along the lines that Llewellyn, a former lay preacher, did not have a clue what he was talking about. One could only imagine the response from Nick Cowdery in NSW if the Attorney-General, John Hatzistergos, had cooked up such an idea.

In South Australia the bar association has called for a permanent corruption commission to be set up. Not that there was any "evident culture" of corruption, but just in case.

The state's Attorney-General, Michael Atkinson, poo-pooed this, saying that in most cases corruption bodies find there is no substance in the allegations and anyway they are "a lawyers' feast."

Perhaps the sight of cabinet ministers resigning in Western Australia as a result of hearings by the Corruption and Crime Commission into the Burke-Grill lobbying machine and the sacking of Wollongong Council on the recommendation of NSW's Independent Commission Against Corruption (ICAC) sent heart rates unnecessarily high.

There has been an enormous stoush in Western Australia between Malcolm McCusker, QC, the parliamentary inspector of the Corruption and Crime Commission, and the head of the commission, the former Supreme Court judge Len Roberts-Smith.

McCusker says he has the power to require the Corruption and Crime Commission to amend its reports and strike out tainted findings. In particular, he said the commission had no basis for expressing an opinion that a former deputy director of the Department of Planning had been guilty of misconduct. That public servant, Paul Frewer, was later investigated by his employer and found to have no case to answer.

The claim that the commission overstepped the mark raises questions about whether the charges against Grill for allegedly giving untruthful evidence to the commission should be dropped. Indeed, the Director of Public Prosecutions has invited Grill to ask him to drop the charges. A lawyers' picnic, and a very messy one, with all the picnickers brawling and drenched in food and drink.

Which brings us back to ICAC. It seems a long time since anyone really important was pinged as corrupt in NSW. The former premier Nick Greiner left office after it was found that appointing his former education minister Terry Metherell to a job in the public service in exchange for his resignation from a safe Liberal seat amounted to corruption. That was overturned by the Court of Appeal.

Numerous small fry local government officials and lower-downs have been found to have transgressed but no one who sets the pace, tone and smell of the state has got near being singled.

Two recent matters stand out. The Ports Minister, Joe Tripodi, was referred to ICAC after it emerged an old crony of his with a history of sexual harassment, Joe Scimone, had landed a \$200,000 a year job at NSW Maritime.

Earlier, the ICAC's Atlas inquiry looked at, among other things, how Scimone got a senior town planning position at Wollongong Council with no qualifications as a town planner and no internal or external advertising for the position.

The Greens also referred to the commission an allegation that the Planning Minister, Frank Sartor, had telephoned the large developer Stockland Trust Group and asked it to buy a table at his Re-Elect Frank Sartor Dinner. That would have been a night to remember. Sartor said "an ICAC review would not bother me one bit." And he was right.

In both his case and the Tripodi case the corruption fighter said no further inquiry was required. It had sniffed around a bit, privately interviewed the main players and could have thought — who knows? — either these complaints did not fit the definition of corruption, or there was not a big enough budget to chase all these rabbits.

These determinations are not subject to review, and ICAC is not required to publish reasons.

The ICAC inspector, Graham Kelly, has said that even he finds it a mystery "why some complaints are taken up and others are not."

The Lemma Government does not seem to be complaining about an ICAC that keeps the mystery alive.

## **Shooting the messenger** **People in Australia are still unlikely to blow the whistle on wrongdoings within an organisation, a study has found, because of the persistence of a workplace culture that punishes those who "dob in" their colleagues.**

Annabel Stafford  
*The Age*, 19 April 2008, p. 5

LET'S play scruples.

You work for a large city council assessing development applications and you have just rejected a proposal from a big company because it fails crucial environmental tests. Despite your rejection, you learn that the project has been approved by the council and your negative assessment has disappeared from the file. When you ask your boss about it, he tells you you are no longer on the case and suggests you take some time off work.

What do you do? Blow the whistle on potential corruption or let it pass?

Probably, if you're like most of the 1859 public servants asked that same question as part of a major three-year study on whistleblowing in the Australian public sector, you'd say you'd report it. Only 4% of those surveyed said they would not do anything about it.

But chances are, if it really came down to it, you'd look the other way.

The same study, which began in 2005 and is due to finish early next year, found that 57% of 5473 public servants who said they had witnessed wrongdoing did not report the most serious instance of it. Of the 39% who did report the incident, only 17% were deemed true whistleblowers — they had reported something outside their area of duty and that was in the public interest. The rest had either reported the wrongdoing as part of their normal duties or were reporting a personal grievance.

Allan Kessing believes the number of people who would blow the whistle is even less than this. In 2003, while still working for Australian customs, Kessing wrote two damning reports on Sydney Airport security, which included the finding that airport security passes had been given to illegal immigrants, people with

criminal convictions and even workers that didn't exist.

In 2005, Kessing's findings were reported by *The Australian* and the government took Kessing to court. Last year, he was found guilty of leaking the reports — which he denies — and was given a nine-month suspended sentence.

Before, as he puts it, "the faeces intersected with the fan", Kessing remembers speaking with his colleagues about the need for the reports to be made public. He says his small department of seven was "outraged" when Customs rejected the reports "and there was talk that we should leak [them]," he says. "But it was just talk."

Kessing, who was retiring, says he asked his colleagues: "Why don't you release it? How can you go on pretending [that everything is fine] and we have the best of all systems? You say it ought to be released and you think it should, but what are you going to do about it?"

His colleagues, he says, began "mumbling about their mortgages."

Another whistleblower, Gillian Sneddon, who helped expose her boss, the former NSW MP and convicted pedophile Milton Orkopoulos, agrees most people would not take the risk. "If you'd asked me ... when I first reported [allegations about Orkopoulos], I'd have said 'of course everybody would do what I did'," she told *The Age*.

"But now, having done what I've done, I believe that most people would not have told the truth, no."

Sneddon says she was "treated like a traitor" after first raising pedophilia allegations with Orkopoulos and then with another NSW MP when Orkopoulos didn't respond. Orkopoulos then assured Sneddon he had reported the allegations to police. But when a detective came to the office about nine months later following further accusations, it became apparent that he had not and Sneddon began to help the police.

Shortly afterwards, unable to deal with the stress, Sneddon told the NSW Parliament — which employed her — of her situation and took workers' compensation leave, though she continued to help the police.

Sneddon still suffers anxiety and depression and was this year made



redundant, ironically on the same day of the year that she took the stand against Orkopoulos. The NSW Parliament says Sneddon's dismissal had nothing to do with her whistleblowing, but while she is out of a job her colleagues — who did not help police — were effectively promoted. "They were rewarded for keeping quiet," she says.

Would it be any wonder, given Sneddon's treatment, that other potential whistleblowers would think twice about coming forward?

Andrew Wilkie — who in 2003 quit his job with the Office of National Assessments and publicly questioned the government's justifications for the Iraq war based on ONA intelligence — says that when asked for advice by other potential whistleblowers he "almost never" advises them to come forward, because "the cost in Australia is too high."

On the day Wilkie quit the ONA, and just before an article containing his claims was to appear in *The Bulletin*, the then ONA head, Kim Jones, called a press conference at Parliament House to tell Australia Wilkie had not been involved in the Iraq campaign and therefore didn't know what he was talking about. The following day, according to Wilkie, "one of John Howard's media staff worked the press gallery at Parliament House saying I was mentally unstable, because I had had marriage problems."

It's a far cry from the United States, says Wilkie, where in 2002 *Time* magazine featured three whistleblowers — who between them had exposed shortcomings in the FBI's investigation of terrorism leads before September 11, and blown the whistle on corporate scandals at Enron and WorldCom — as its "people of the year."

"That would never happen in Australia," he says, adding it is particularly tough to be a whistleblower in this country, because of Australians' innate conservatism and their reluctance to challenge the status quo. "It's unAustralian to do in your mates."

But the Whistling While they Work study — which has included a survey of 7663 public officials across 118 state and commonwealth agencies — suggests the picture is not entirely

grim. "As many as 12% of all public servants have reported some form of public interest wrongdoing in their organisation over a two-year period," the project's draft report estimates, "a figure equating to 197,000 public servants nationally."

That's a lot of whistleblowers who have not been destroyed. Indeed, project leader AJ Brown says that in at least 70% of cases whistleblowers said they were not treated badly. Two thirds believed their reports had at least been investigated.

The study also found there was not a certain "type" of person likely to become a whistleblower. Criminal psychologist Richard Wortley, who looked at the psychology of whistleblowers for the project, says circumstances are a better predictor than personality when it comes to who will become a whistleblower.

"People were much more inclined to report something ... [if it] was directed towards them and there seemed a low threat associated with it," he says. "For example, they were much less likely to report a wrongdoing if the perpetrator was a lot more senior than them and there was more than one of them."

To the extent that personality was a factor, Wortley says the findings of the study contradicted the old view of whistleblowers as "disgruntled, aggrieved malcontents." Instead, those people who reported wrongdoing tended to have "somewhat higher job satisfaction and seemed organisationally committed," he says. Brown says it is important to correct the view of whistleblowers as rare and inevitably mistreated, because if you assume "every whistleblower suffers, then it's a licence for governments and agencies to do nothing because [it's par for the course]."

BUT he is quick to point out that the number of people who report wrongdoing is still very low. And the number of reprisals against whistleblowers — 22% report being persecuted — is way too high.

"In some agencies, the proportion of those who have blown the whistle on serious matters who say they were treated badly is less than 5%, but in others it's up to 40%."

As an example of what can go wrong when no one is willing to speak out, Brown points to the Department of Immigration. There must have been potential whistleblowers who believed there were problems with the treatment of Cornelia Rau, wrongfully detained for 10 months, or Vivian Alvarez Solon, wrongfully deported, who "didn't say anything", Brown says.

Likewise, there must have been colleagues of obstetrician Graeme Reeves, "the Butcher of Bega", who might have seen or heard something and could have stopped him allegedly mutilating hundreds of patients.

"Where there is a poor response to whistleblowers there is a weaker culture of speaking up and things go unreported, which means more and more people are going to be affected [by the wrongdoing]," Brown says.

Queensland nurse Toni Hoffman, who blew the whistle on Bundaberg Hospital surgeon Jayant Patel, says that when she began to make complaints about Patel in 2004, she was told by hospital management that she was the one with the problem. She was a bad communicator, had poor conflict resolution skills; Patel even accused her of racism.

Hoffman "shudders to think" what would have happened had she not gone to her local member of parliament when she did. "If I hadn't said anything I don't know how long it would have taken [to expose Patel]," she says. "It was only the fact that a journalist [Hedley Thomas, then with *The Courier Mail*] googled his name [that they found out he was a fraud]," she says.

In a bid to encourage disclosures in the public interest, the Rudd Government has promised legislation to provide some protection for whistleblowers who have gone public after efforts to internally address wrongdoing have come to nothing.

In NSW, in the wake of the Graeme Reeves scandal, the NSW Government announced it would make it mandatory for doctors to report the misdeeds of their colleagues. In Victoria too, whistleblower legislation is being reviewed.

But Brown warns that legislation, on its own, can do very little to improve the situation. One need only look at the fact that Hoffman's

persecution occurred in Queensland, “which has the most comprehensive whistleblower protection in the country,” he says. “It really demonstrates that it doesn’t matter how good legislation is if it’s not implemented [in each agency].”

Sneddon believes no legislation can dictate the human conscience. “There are always going to be people who have no backbone and that lie, that are more interested in their own positions than telling the truth and that’s why it comes down to what a person’s all about,” she says.

“I don’t know how that’s going to change.”

#### FAMOUS WHISTLEBLOWERS

##### **Coleen Rowley**

FBI agent who, in a leaked internal memo, accused the FBI of thwarting her office’s efforts to investigate a terrorist lead before the September 11 attacks. Named one of *Time*’s people of the year in 2002.

##### **Cynthia Cooper**

Head of internal audit at WorldCom who helped uncover accounting fraud that had falsely inflated the company’s bottom line before its bankruptcy in 2002. Named one of *Time*’s people of the year in 2002.

##### **Sherron Watkins**

Enron executive who warned Enron’s chief of its dodgy accounting and her fears that it could “implode in a wave of accounting scandals” before it collapsed. Named one of *Time*’s people of the year in 2002.

##### **David Kelly**

Widely thought to be the source of a BBC story that accused the British Government of “sexing up” its case for the Iraq war. Took his own life after a Government campaign to finger him as the source and undermine the BBC story.

##### **Mark Felt**

Better known as “Deep Throat”, the source that helped journalists Bob Woodward and Carl Bernstein uncover the Watergate scandal. The FBI officer “outed” himself in 2005.

## The whistleblower’s unending story

Adam Geller

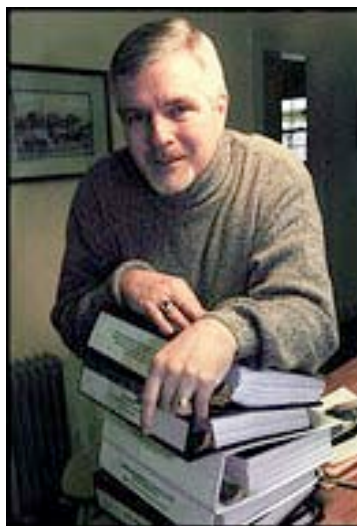
Associated Press, 26 April 2008

COLUMBUS, Ohio — The guest lecturer steps to the front of classroom 322 with a lesson plan, but not from any textbook.

Instead, Dave Welch comes with a story to tell, edgy and very personal. The names have been changed, he says, “to protect the guilty.”

He directs students to the corporate financial forms projected on to a screen. Years ago, working at a small-town bank in the Virginia mountains, Welch combed through these figures and saw things that made him suspicious.

When he confronted the bank’s president with his doubts, it cost him his job.



David Welch

The story might have ended there. But this time — months after titanic scandals capsized Enron and WorldCom — things would be different.

There ought to be a law, Congress decided, protecting workers who expose what might be the next Enron. Who could’ve imagined the fight between the little bank and the fired accountant would become the new measure’s most unlikely — and most strenuous — test?

More than 1,000 self-professed whistleblowers have come forward since.

The great majority have seen their cases rejected; about 160 settled before an initial ruling. Only six workers have won before a Labor Department judge — and the review board that hears appeals has not ruled in favor of a single whistleblower.

Now, Welch is ready to bring his story to a close. It’s not easy, though, to conclude something that winds on without an ending.

“This is the message the courts are sending to whistleblowers,” Welch says, the Tennessee in his voice taking on a chill. A new image beams on to the classroom screen — a pack of hunting dogs. In their midst is the prey, a nervous fox, head down low.

“When you’re in deep trouble, keep your mouth shut and your eyes straight ahead.”

— — —

Six years ago, Americans embraced whistleblowers as a new kind of hero.

If only Sherron Watkins’ warning had been heeded, Enron might have survived, some said. Then an auditor, Cynthia Cooper, exposed massive bookkeeping fraud at WorldCom.

The “year of the whistleblower,” one magazine crowed.

In July 2002, President Bush signed a new law, known as Sarbanes-Oxley, requiring top executives to stand behind financial statements and work to prevent fraud and abuse.

But the law also spoke to corporate foot soldiers, offering whistleblower protection — albeit with loopholes.

From the start, though, that protection came into question. Hours after Bush signed, a spokeswoman said the administration believed it applied only to whistleblowers who talked to a Congressional committee pursuing an investigation.

“I don’t see any room for interpretation here,” responded one of the measure’s authors, Senator Chuck Grassley, Republican from Iowa. “Our intent was plain, to protect corporate whistleblowers, period.”

Months later, tensions flared inside Cardinal Bankshares Corporation, a holding company for the local bank in one-stoplight Floyd, Virginia, population 432.

Welch, the chief financial officer, refused to sign financial statements, saying they overstated profits. He told bank president Leon Moore he

suspected him of insider trading. Moore was furious when Welch compared his 53-employee bank to Enron. The bank's board fired Welch.

He turned to the federal Occupational Safety and Health Administration, which enforces whistleblower protection. An investigator determined the bank was not at fault.

But a federal administrative law judge saw it differently. The new law "was expressly enacted by Congress to foster the disclosure of corporate wrongdoing and to protect" the workers responsible, the judge wrote in early 2004, ruling the bank should reinstate Welch.

The decision made Welch the first worker protected by the new law. Now came the acid test: What was that protection worth?

— — —

There's not much call for accountants in the small towns of the Blue Ridge, much less for one battling his former employer.

But Welch, attached to a 22-acre farm bought from his wife's grandparents, was determined to stay. He spent six months sending out resumes and going to job interviews.

Afterward, though, employers seemed to vanish "into a black hole not to be heard from again," he says.

With unemployment checks running out, Welch listened when a friend recommended a finance job at a hospital 3½ hours away. He rented an apartment there, driving home on weekends.

The job was eliminated in cost-cutting a little more than a year later. But shortly before, the Labor Department judge ruled in Welch's favor. The couple, who stumbled on the decision while checking e-mail during a vacation, embraced in the hotel lobby.

But the bank — denying Welch's accusations and accusing him of insubordination and incompetence — would not give in.

"We determined through a thorough and fair investigation that there was no merit to Mr. Welch's complaints," the board wrote in the weekly *Floyd Press*. "We believe our decision was right then and we believe even more firmly now that our decision was correct."

The bank appealed, investing in a case it saw as setting a crucial precedent.

"We just said, look, we're not going to set back on this," Moore says. "We're going to fight it."

Moore says people came up at the bank's annual meeting and urged the company not to give in. He took his viewpoint on the road, speaking about the case to banking industry groups.

Meanwhile, Welch decided that to find work, the couple would have to move. He became convinced of his status as an exile when he ran into a former co-worker at the counter of the Floyd Pharmacy.

"She looked around to see if anybody was watching her," Welch recalls, "and she said, 'Excuse me, I can't talk to you,' and she walked away."

— — —

Congress sent a straightforward message to would-be whistleblowers.

A worker didn't have to be right. If the worker "reasonably believes" their company has broken securities law or harmed investors, and showed they'd been retaliated against for speaking up, that was enough.

But when the Labor judge ruled for Welch, the promise of resolution dissolved in a protracted tug-of-war.

The bank argued the ruling was not a "final" order. Taking Welch back was impossible. He'd already been replaced and reinstating him would severely disrupt life inside a small company where he was clearly not wanted.

Nearly 2½ years after Welch was fired, the judge again ordered reinstatement and back pay. The company refused. The question of what to do bounced between Labor officials, federal court and the Administrative Review Board that has the Labor Department's final word.

Federal lawyers argued the bank had to take Welch back, even if temporarily.

In spring 2006, the ARB, too, ordered Cardinal to take Welch back on a temporary basis. The bank again refused.

In October 2006, four years after Welch's firing, a U.S. District Court judge in Roanoke, Virginia declined to enforce reinstatement, while expressing concern.

"The delay in the administrative process has been inordinate," Judge Glen Conrad wrote.

By then, the accountant had long given up finding another job locally. Down to one paycheck, the Welch's say they burned through \$115,000 in investments. In late 2004, they sold the farm where they'd hoped to retire.

Meanwhile, debate grew over Congress' effort to protect whistleblowers.

Lawyers for companies say many corporate whistleblower cases failed because they are frivolous, brought by angry workers looking to settle a score.

In the few cases like Welch's that moved forward, the government has investigated carefully, determining that much of what workers allege is beyond the law's scope, said Michael Delikat, a New York attorney who represents employers in such cases.

Critics disagree. The Labor Department has been "defining more and more whistleblowers out of protection," said Richard Moberly, a University of Nebraska law professor who analyzed the outcomes of such cases.

Labor Department officials say they are administering the law as it was written.

"We're trying to apply things and understand them," said Nilgun Tolek, director of OSHA's [Occupational Safety and Health Administration] whistleblower protection office.

The law, she says, applies to workers who report suspected wire fraud, bank fraud and other specific misconduct: "While some people may see that as reading the statute too narrowly, that is what the statute says."

The Labor Department's effectiveness is reflected, at least partly, in its brokering of settlements between workers and employers, officials say.

But critics note how few decisions favor workers. Through February, the government had ruled in 1,091 Sarbanes-Oxley cases, coming down on the side of workers just 17 times in initial rulings.

"The carefully targeted legislation that you've described is legislation that has failed to protect people," Representative Tim Bishop, Democrat from New York, said at a House hearing last year.

The promise to protect whistleblowers is falling well short of expectations, Moberly says.

The prime example, he says, is the odyssey of Dave Welch.

Without work, Welch went back to school. When Franklin University in Columbus, Ohio called about a job early last year, he said a prayer.

At the end of his interview, Welch was shown in to the office of Paul Otte, the school's president at the time.

Otte is a blunt-spoken long-ago Marine who sits on two corporate boards. He'd heard about Welch.

"Let me ask you," Otte said. "Did you refuse to certify [the bank's financial statements] or did you sign them and then blow the whistle?"

"I refused to sign," Welch said, unsure which was the right answer.

It was good enough for Otte, who'd just written an article preaching this message: "The greatest failures resulting from unchallenged authority have occurred when people reporting directly to the CEO lacked the courage to challenge their boss."

Last July — nearly five years after Cardinal fired Welch — the Labor Department's review board ruled in favor of the bank. As a trained accountant, Welch could not have "reasonably believed" that the financial reports he objected to were problematic, the board said.

The ruling came weeks before Welch started his new job, supervising introductory accounting classes.

He makes the rounds of classes, offering his experience as a window into the real-world choices students will be expected to make.

But he and the bank have continued battling.

Soon after the review board ruled, Welch appealed. The case is set to be heard by a federal appeals court in Richmond, Virginia in mid-May.

Both the accountant and the bank say they deserve to win. Both say that, whatever the court decides, the case may well continue.

Moore, the bank president, acknowledges Cardinal has spent heavily, but says it never considered settling. The stakes are too high to compromise.

"If you don't stand up for what you think's right, then you don't really

need to be in this business," Moore says.

At least on that, the two men can agree.

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## Perturbed vs. patient

Sam Horn

*Tongue Fu! How to Deflect, Disarm, and Defuse Any Verbal Conflict*

New York: St. Martin's Griffin, 1996,

pp. 44-45

"Patience is the companion of wisdom." — Saint Augustine



Sam Horn

In one of my workshops, a bartender said a tough part of his job is getting hit up for complimentary drinks. He said, "I used to lose my patience because freeloaders put me in an awkward position. Now if someone tries to wheedle a freebie out of me, I just say, 'You're not asking me for a free drink, are you?' Or if minors are pressuring me to serve them, I say, 'You wouldn't want me to lose my job by selling drinks to someone under age, would you?' Now that I know what to say, I don't get perturbed anymore when someone puts the squeeze on me for a free beer."

A policeman added, "We use this Name-the-Game idea a lot. 'You wouldn't be trying to bribe a police officer, would you?' is usually all it takes to stop someone in his tracks if he's on the verge of suggesting something illegal."

Have you ever been the bearer of bad tidings? Did the recipient of the bad news dump his displeasure on you for reporting it, even if you had nothing to do with causing it? Would you like to know how to prevent this?

Adopt the "Why are you taking it out on me?" posture. Shrug your shoulders, put both palms up and out in a "Why me?" gesture, and say plaintively, "Hey, don't shoot the messenger."

"Anger is momentary madness," observed the great poet and satirist Horace. Most people will stop making you the object of their anger if they're made aware of their madness. They'll say something like "I know. It's not fair to blame you. It's just this is the last thing I needed to hear today." Or they'll apologize and say, "I'm sorry for taking this out on you. This news just comes at the worst possible time."

"If we have the ability to send a satellite to the moon, why is it so difficult to send all corrupt officials to prison?"

— Wu Mingfa, a farmer from Xichang, China.

The country launched its first lunar probe on October 24.

*Time* magazine, 5 November 2007, p. 10

## Heroes of integrity

*New Internationalist*,  
December 2006, p. 13

It takes courage and determination to fight corruption. Often those doing so put themselves at great personal risk. Here are a few of the winners of the Integrity Awards that the anti-corruption NGO Transparency International confers annually.

**Dora Nkem Akunylli**, a Nigerian pharmacologist, defied death threats while tackling corrupt practices in the manufacturing, import and export of drugs, cosmetics and food products. As Director General of Nigeria's National Agency for Food and Drug Administration and Control she earned nationwide respect for her persistence in prosecuting illegal drug traders and in imposing strict standards on multinational companies. In particular, she has pursued manufacturers and importers of counterfeit drugs, deemed to be a leading cause of deaths by stroke and heart failure in Nigeria. Counterfeit drugs worth an estimated US\$16 million have been confiscated and destroyed, and in the process the lives of thousands of innocent Nigerians have been saved.

**Khairiansyah Salman** is an auditor at the Supreme Audit Agency in Indonesia who revealed grand corruption in the procurement activities of the General Election Commission and then exposed the bribery of the Commission's members. His actions enabled the Corruption Eradication Commission to uncover a \$2.1 million scandal in the General Electoral Commission which involved virtually all of its members.

**Eva Joly** is seen as the leader of a new breed of judges who have not shied away from calling to account crooked business people and the French political élite, including such figures as Roland Dumas and Bernard Tapie. She was propelled into the limelight by her seven-year investigation of the Elf-Aquitaine oil company scandal during which she was subjected to intimidation and death threats and remained under constant police protection. Joly has investigated financial crime in France with unprecedented zeal,

ending a tradition of not treating high-class financial wrongdoings as crimes at all.

**Millica Bisic** fearlessly took on corruption in the tax system of the Republic of Srpska (former Yugoslavia), clamping down on those benefiting from the shadow economy by refusing to pay their share of taxes. For the first time the economics professor and former Head of the Tax Administration forced large businesses to pay. Many have since been charged with tax evasion. Dr Bisic has implemented a series of administrative and legal reforms that will have a lasting impact and give citizens some faith in the tax system.

**Naftali Lagat**, a Kenyan police constable, was on duty at the airport one night in 1991 when a director of Goldenberg International arrived, carrying a suitcase full of gold. Constable Lagat bravely refused orders from senior officials whom he suspected of trying to cover up illegal actions. Even after he was forced to appear before the Criminal Investigations Department the constable did not budge, refusing to give in to corrupt officials as he felt that he would be breaking the rules. It turned out that he had helped uncover one of the country's biggest corruption scandals.

### Sex abuse and the Vatican

For years child-abusing priests have got away with it because their churches were more concerned with protecting the institution and its clergy than protecting children. But today the Catholic Church is having its confidence — and its coffers — shaken like never before by sex-abuse survivors, their families and even in some cases, governments.

In Ireland a 2005 official government inquiry identified more than 100 allegations of child sexual abuse made between 1962 and 2002 against 21 priests operating under the aegis of the Diocese of Ferns. As a result of the Ferns Inquiry hundreds of survivors came forward and spoke out for the first time about their experiences. This year the campaign group One in Four collated data revealing that 38 Dublin parishes harboured paedophile priests who preyed on children.

Meanwhile, in Milwaukee in the US State of Wisconsin, the family of Dan O'Connell — killed by Rev Ryan Erickson, a priest he accused of child sex abuse — were having their calls for reform ignored by the church. In August 2006 they took the US Council of Catholic Bishops to court, naming almost 200 bishops. The family filed an unprecedented lawsuit, which asks for the names and locations of some 5,000 clergy accused of molesting children, so they can publicize the list. They say the list is known only to the church. No one has successfully sued the Vatican as a whole over sexual abuse by priests but individual dioceses, especially in the US, have had to pay out large settlements.

Whistleblowers within the Catholic church are few, but Father Tom Doyle is one notable exception. Doyle was a Vatican lawyer until he was sacked for criticizing the church's handling of child abuse claims. This year he took part in a BBC TV Panorama programme that examined a secret document instructing bishops on how to deal with sex abuse scandals: it included an "oath of secrecy" — or "cover-up" in layperson's terms — enforceable by excommunication. The Cardinal responsible for enforcing the 2001 document was one Joseph Ratzinger — the current Pope. Father Doyle says: "What you have here is an explicit written policy to cover up cases of child sexual abuse by the clergy and to punish those who would call attention to these crimes by the churchmen. When abusive priests are discovered, the response has been not to investigate and prosecute but to move them from one place to another [giving them] ... a whole new crop of victims in the next place. This is happening all over the world."

### Whistleblower on medical error

Carol Devine

It is sad it has taken the horror story of former doctor Graeme Reeves, dubbed the Butcher of Bega, for the government to show signs of heeding the persistent lobbied warnings and advice of Lorraine Long. In fact, endless accolades are due to Lorraine for helping blow the whistle on Mr Reeves and for her years of advocacy for medical error victims.

Lorraine's whistleblowing activities do not arise from her observations as an employee within the health system, but rather from her family's firsthand experience when her mother died as a result of medical error in 1994. Lorraine has since harnessed the experiences of thousands of Australians who have been miserably affected by medical blunders. She offers support to medical error victims in her capacity as founder and chief executive of the Medical Error Action Group. Alarming, successive governments have managed to ignore their own data — data constantly highlighted by Lorraine — showing *at least* 18,000 dead each year due to medical error. This death toll is worse than 45 plane crashes per year.

Over recent months Lorraine has undertaken an extraordinary role, shouldering the most tragic and horrific stories from women who have suffered at the hands of Mr Reeves and, at the same time, utilising media attention to show past incompetence of the health system to deal with medical errors. She has fostered transparency by offering alternative advice to affected women to take matters to the legal system. In a recent media interview, Tony Abbott MP, former Minister for Health and Ageing, stated he should have listened to that woman — referring to Lorraine Long.

Further information:

<http://www.medicalerroraustralia.com>

Carol Devine is a member of Whistleblowers Australia.

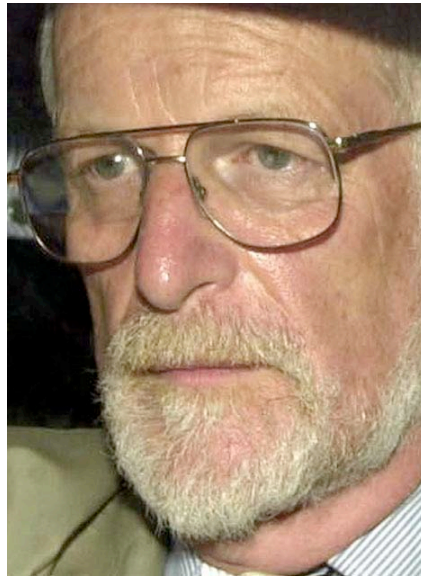
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### BOOK REVIEW

#### The David Kelly mystery

Brian Martin

David Kelly was Britain's foremost weapons inspector, with special expertise on chemical and biological weapons. He had inspected facilities in several countries, including Iraq. He worked for the Ministry of Defence.



David Kelly

In March 2003, US military forces invaded Iraq without UN endorsement. The UK government was the principal partner in this operation, committing significant numbers of troops, whereas other governments, such as Australia's, provided only token assistance. British Prime Minister Tony Blair, in defiance of many of his New Labour Party colleagues, gave eloquent support for the invasion.

The primary public justification for the invasion was Iraqi weapons of mass destruction. In the lead-up to the invasion, Blair backed his position with a dossier on Saddam's WMDs, including the striking claim that Iraqi biological and chemical weapons could be deployed within 45 minutes.

In this context, Kelly's expertise was highly relevant. In the aftermath of the invasion, a desperate search revealed no WMDs nor even any

evidence of active programmes. This was highly embarrassing to Blair and other supporters of the invasion.

In May, Kelly spoke to BBC reporter Andrew Gilligan about WMDs. Kelly said that government figures had pushed to make the claims in the dossier stronger than what intelligence service officers preferred. In Gilligan's words, the dossier had been "sexed up," in other words exaggerated and distorted. Gilligan's broadcast report caused a storm of controversy. It seemed to provide proof that the government had manipulated intelligence information for political purposes.



Andrew Gilligan

Kelly had spoken anonymously. The government obtained his identity and revealed it to the media. Then he was called to give evidence to the Foreign Affairs Committee in a televised hearing, where he was grilled for over an hour.

A few days later, Kelly was discovered dead in a field near his home with his wrist slit, an apparent suicide attributed to the stress of having his credibility savaged in public and his career jeopardised.

Blair immediately set up an inquiry under Lord Hutton, who focussed on the role of Gilligan and the BBC. Hutton's main target was the BBC, and

the government used the inquiry findings to assail it.

Kelly was widely perceived to have been an innocent victim of high-level politicking. In many circles he has been lauded as a whistleblower. He might better be described as a scientist who regularly briefed the media — with official or tacit approval — and was honest about a politically sensitive topic. Kelly did not take a public stand, in contrast to Australia's intelligence expert Andrew Wilkie who went public with his disagreement with the government's stated reasons for going to war.

Kelly had regularly briefed journalists on weapons issues, with formal or tacit approval, so his exposure and grilling had all the marks of scapegoating. Whether or not Kelly was a whistleblower, he was treated like one.

From the beginning, some people had suspicions about Kelly's supposed suicide. His wrist was slit, but not in a way that would cause death. There were pain pill packets in his pocket, with only one of 30 pills remaining, suggesting that he had taken the remainder — but Kelly was known to detest taking pills. There were discrepancies in reports about how Kelly's body was found. There was no suicide note. Some of Kelly's friends said he had seemed in good spirits.

Had Kelly committed suicide or was he murdered? Conspiracy theories abounded on the Internet.

Norman Baker, a member of the Liberal Democrats, was elected to parliament in Britain in 1997. In 2006 he relinquished his frontbench position and, while remaining an MP, decided to use some of his spare time to investigate Kelly's death. The result of his efforts is a fascinating book, *The Strange Death of David Kelly*.

Baker covers the issues carefully and comprehensively. He delves into Kelly's personal background, the sequence of events just before Kelly died, the testimony on Kelly's death, the political context, the dossier, the Hutton inquiry, and a range of possible explanations for the death. Several chapters in the book are excellent primers on related issues, such as the British government's manipulation of the dossier and suspicious deaths of other weapons experts in Britain and elsewhere.

Baker's investigative skills are quite apparent. He also had the advantage of being an MP with high credibility, and the resources that came with it. He contacted police, Kelly's friends and colleagues, and a number of figures in the security services, in Britain and other countries. His high profile and an article he wrote about his interest in the case led to his receiving tips, including anonymous letters.



Norman Baker

Baker offers convincing evidence that Kelly did not commit suicide but instead was murdered. But by whom, and why? Baker approaches these questions carefully and systematically. He examines a number of possibilities in terms of capability and rationale. For example, he assesses the role of US agencies, examining the enormous pressure exerted by war advocates around Bush to obtain intelligence agency support for claims about WMDs, the record of US covert assassinations, and possible rationales for wanting Kelly dead. Baker obtained independent comment from several operatives in US intelligence

agencies. In their judgement, Kelly was murdered, but US agencies were not involved.

Baker is restrained and judicious in his prose. For example, he scrutinises the Hutton inquiry, finding that Hutton gave only cursory attention to Kelly's death — assuming it was suicide — and sloppily leaving all sorts of discrepancies and possible leads unexplored. He also gives a history of Hutton's prior assignments, noting that he had always slavishly supported the government line. Baker provides all the information needed for the reader to conclude that the Hutton inquiry was a sham.

*The Strange Death of David Kelly* is filled with facts and logical argument, telling an intriguing story. It is a model of balanced analysis. It shows that one skilled and dedicated investigator can accomplish far more than an expensive official inquiry. The story is as dramatic as any fictional murder mystery, so I leave Baker's conclusions for the reader to discover and assess.

Whistleblowers wanting someone to investigate their cases should wish to have someone like Norman Baker but, unlike David Kelly, be alive at the end of the story.

Norman Baker, *The Strange Death of David Kelly*, London, Methuen, 2007, 415 pages.

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

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## Whistleblowers Australia contacts

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**Postal address:** PO Box U129, Wollongong NSW 2500

### 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 7.00pm, Presbyterian Church Hall, 7-A Campbell St., Balmain 2041.

**Contact:** Cynthia Kardell, phone 02 9484 6895, fax 02 - 9481 4431, ckardell@iprimus.com.au

**Website:** <http://www.whistleblowers.org.au/>

**Goulburn region:** Rob Cumming, phone 0428 483 155.

**Wollongong:** Brian Martin, phone 02 4221 3763.

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

**Queensland:** Feliks Perera, phone 07 5448 8218, feliksperera@yahoo.com; Greg McMahon, phone 07 3378 7232 (a/h) [also Whistleblowers Action Group contact]

**South Australia:** John Pezy, phone 08 8337 8912

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

### Victoria

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

**Contacts:** Stan van de Wiel, phone 0414 354 448; Mervyn Vogt, phone 03 9786 5308, fax 03 9776 8754.

### Whistle

Editor: Brian Martin, bmartin@uow.edu.au, phones 02 4221 3763, 02 4228 7860. Address: PO Box U129, Wollongong NSW 2500. Associate editor: Don Eldridge. Thanks to Cynthia Kardell and Patricia Young for proofreading.

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## WBA conference and AGM, 2008

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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](http://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

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## Whistleblowers Australia membership

Membership of WBA involves an annual fee of \$25, payable to Whistleblowers Australia, renewable each June. Membership includes an annual subscription to *The Whistle*, and members receive discounts to seminars, invitations to briefings/discussion groups, plus input into policy and submissions.

If you want to subscribe to *The Whistle* but not join WBA, then the annual subscription fee is \$25.

The activities of Whistleblowers Australia depend entirely on voluntary work by members and supporters. We value your ideas, time, expertise and involvement. Whistleblowers Australia is funded almost entirely from membership fees, donations and bequests.

**Send memberships and subscriptions to Feliks Perera, National Treasurer, 1/5 Wayne Ave, Marcoola Qld 4564. Phone 07 5448 8218, feliksperera@yahoo.com**