

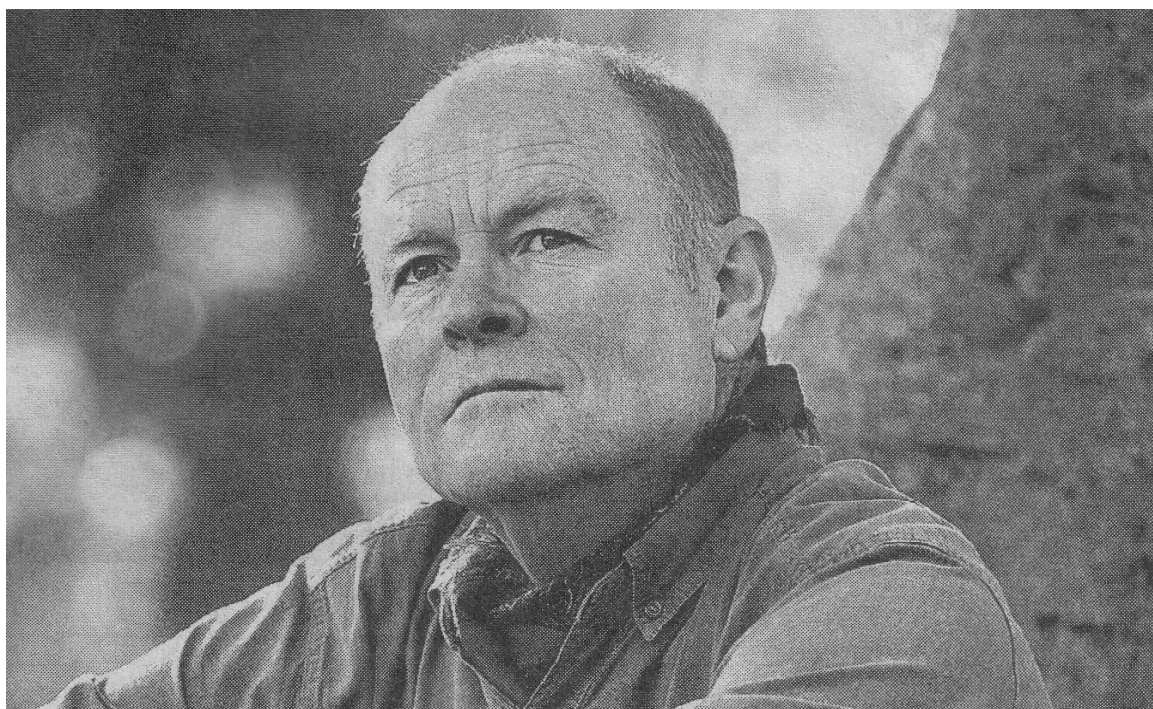
"All that is needed for evil to prosper is for people of good will to do nothing"—Edmund Burke



The Whistle

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Newsletter of Whistleblowers Australia



Allan Kessing: see pages 3-8

Media watch

Fines bring calls for contempt changes

Sydney Morning Herald,
26 June 2007, p. 7

CALLS were made yesterday for new laws to protect journalists and whistle-blowers after two reporters were convicted and fined for contempt of court.

Michael Harvey and Gerard McManus, of the *Herald Sun* in Melbourne, avoided jail but were each fined \$7000 as a Victorian County Court judge warned they were not above the law. The pair had pleaded guilty to contempt of court for refusing to disclose the source of a leaked story about a federal proposal to cut war veterans' benefits. ...

Truth comes at a high price

Matthew Moore
Sydney Morning Herald,
26 June 2007, p. 11

The past few days have seen the legal system serve up yet another vivid illustration of the depressing state of free speech in Australia. On Friday the former public servant Allan Kessing copped a nine-month suspended jail sentence for his crime of leaking reports to a newspaper about the chaotic state of security at Sydney Airport.

Yesterday two journalists joined him in the ranks of the criminal class when Chief Judge Michael Rozenes, in Victoria's County Court, ordered convictions be recorded against Melbourne *Herald Sun* staffers Michael Harvey and Gerard McManus, and fined them \$7000 each.

They were convicted of contempt of court, but their crime was doing their jobs by telling the public what was really going on, rather than feeding them the spin-doctored version of events the Government had cooked up.

Their story, published in the newspaper in 2004, embarrassed the

Government, humiliated the then minister for veterans' affairs, Dana Vale, and provided another reason why the Australian media have formed a Right to Know coalition to lobby for changes to the law.



Michael Harvey and Gerard McManus

The story was good journalism. It should never have ended up in court. It revealed the Government had opted to accept just five of 65 recommendations on ways to improve benefits for war veterans, thereby saving about \$500 million.

What stung was that the journalists got hold of the minister's "speaking notes" which, they wrote, revealed how she would "publicly sugarcoat the Government's offer to veterans and their families." By the time the story was published, a revolt by Government members had killed off the plan. But that didn't stop the Government's pursuit of the leaker.

A public servant, Desmond Patrick Kelly, was accused. During committal proceedings the two journalists were directed to identify their sources for their story. They refused, saying they were acting in accordance with the journalists' code of ethics, which requires journalists to protect the identity of their sources in such circumstances.

Judges in Australia have little time for such defences. Rozenes has become the latest to show how little understanding he has of the way journalism works in the real world or

that there is any value in the public knowing how government functions.

He said counsel for the journalists had argued "that I should consider that the journalists were discharging an important public function and that unless confidential communications such as these were respected, sources for journalists would simply dry up."

"I am not convinced this would be the case," he said.

Journalists have frequently refused to identify their sources and Rozenes acknowledged as much by citing a series of cases where they received custodial sentences for refusing to do so.

As the outcry from journalists, the Press Council and media companies has grown in recent months the Government has belatedly drawn up some limited shield laws.

Rozenes spelt out just how limited they were when he said that even if such laws were in force, he would still have forced Harvey and McManus to answer questions in a case against Kelly because their evidence was critical to the prosecution.

On top of that, the journalists weren't covered by the shield because it's a criminal offence to leak material. If shield laws won't protect journalists such as Harvey and McManus from reporting public service leaks, you have to wonder what value they really have.

The problem is the Government's relentless pursuit of anyone leaking information. As News Ltd's chairman and chief executive, John Hartigan, said after yesterday's conviction: "Whistleblowers are being hunted down and prosecuted and journalists who refuse to name their sources in breach of their ethical responsibilities are being dragged to court with them."

The only way that is likely to change is with legislation to protect whistleblowers who release information in the public interest. Many states in the US have such laws, and events of the past few days show that Australia can't get them soon enough.

Matthew Moore is the *Herald's* freedom of information editor.

No jail for airport leaks

Simon Kearney

The Australian, 23 June 2007, p. 2

FORMER Customs officer Allan Kessing narrowly escaped a jail term yesterday when he was given a nine-month suspended prison sentence for leaking two “protected” reports on airport security that sparked a major overhaul of Australia’s aviation policing.

Mr Kessing, 59, was in March found guilty by a jury of leaking the reports to *The Australian* in May 2005, but he maintains his innocence.

The furore created by the reports, which exposed organised crime at Sydney airport, prompted the federal Government to launch a review and ultimately spend \$200million on new policing measures.

Despite support for Mr Kessing from public interest advocates and media outlets, NSW District Court judge James Bennett yesterday said he had put aside those arguments in deciding to give Mr Kessing a custodial conviction.

“This misconduct is so serious no other option could be taken,” he said.

“Whether or not it is appropriate to view the offender in the heroic light in which he has been bathed by some ... there is no justification for communicating the contents of the reports.”

However, he said, given that Mr Kessing was no longer working for Customs, there was little chance of reoffending.

He also took into account Mr Kessing’s years of public service and good character. “This misconduct is entirely an aberration,” he said.

Outside the court, Mr Kessing said he was grateful the case — which has cost him more than half his superannuation payout — was over but vowed to appeal.

“I think it is outrageous that the charge was brought in the first place when you consider all the other leaks that go on,” he said. “Two years of investigation, thousands and thousands of hours of AFP work, it’s the most outrageous waste of money and resources when there’s important jobs to be done. I mean, airport security is still no better than it was three years ago.”

Former head of the Customs Officers Association, Bob Spanswick, himself a whistleblower who cost former federal health minister Michael McKellar his job in 1982 for a false Customs declaration on his colour television, said the association would pay the appeal costs.

“He should have got a medal for writing the report,” Mr Spanswick said, “and if he did release it, he should have got a second medal.”

The courtroom was packed with former Customs officers and whistleblowers who came out in support of Mr Kessing.

“If anybody should have been in the dock today, or at least in the court, it should have been the Prime Minister and other ministers responsible for this area saying ‘we’re very sorry Mr Kessing’, and ‘we’re sorry’ to the court for wasting taxpayers’ money in this way,” former Australian Secret Intelligence Service officer Warren Reed said outside court. “They’ve insulted the integrity of a fine Australian public servant.”

Mr Kessing said his conviction was a warning to other public servants: “They wanted a custodial sentence in order to deter other potential whistleblowers in the public service, those are the Crown’s own words.”

He called on public servants who felt they had something to expose not to be swayed by his ordeal. “If your conscience tells you to do something, you’ve got to take the chance,” he said.

Mr Kessing was ordered to pay a \$1000 good behaviour bond, which will apply for the nine months of his sentence.

Law a structural weakness

Chris Merritt

The Australian, 23 June 2007, p. 2

LET’S get this straight from the outset: the mere fact that Allan Kessing has not been jailed does not mean he has been treated leniently.

He has been dragged through the courts and victimised by a government that should be ashamed of itself.

Kessing might be free, but he has been left with a criminal conviction

and legal bills of about \$40,000. His retirement plans are in tatters.

And for what? Kessing’s actions harmed nobody. They embarrassed some powerful but incompetent bureaucrats and their mates in the federal Government. Their maladministration means that embarrassment was entirely justified.

Kessing forced the Government to remedy security flaws at the nation’s airports. And that means he has done more to prevent terror attacks on Australia than all the fridge magnets ever issued by the Government.

He acted when the national interest demanded that he put his own self-interest aside. And how does Australia repay him?

Instead of honouring his courage, our Government — through the judicial application of a mean-spirited law — has threatened to jail him if he does it again. The law that has been used against Kessing is still on the federal statute books. And that is the way Canberra likes it.

It means that any public servant who leaks to the media — regardless of whether their actions are in the public interest — faces a similar fate.

If the Government is serious about the war on terror, this law must go. In earlier times, it might easily have been dismissed as the self-indulgence of yet another government that was intent on controlling the flow of information to the public. But the Kessing case has shown that this law is a structural weakness that could easily be exploited by terrorists.

It encourages public servants to remain silent in the face of an obvious security flaw.

The war on terror is too important for the Government to indulge in this kind of self-serving nonsense. A little embarrassment is a small price to pay if it prevents a terror attack.

As a nation, we can only hope that every federal public servant has the common sense to treat this law — and the treatment handed out to Kessing — with the contempt it deserves.

While it remains in force, it diminishes all associated with it. There is no other way of viewing the sentencing remarks of judge James Bennett yesterday. “This misconduct is so serious no other option could be taken,” he said.

Misconduct? Serious?

The unfortunate judge had no option but to administer the law that parliament approved. But there was no need to go over the top.

Whistleblowing: beyond the call of duty

Warren Reed
New Matilda, 16 May 2007

The predicament of Allan Kessing, a former federal public servant, is a classical example of how whistleblowers serve their community by speaking out and why they need protection from a vindictive state hell-bent on making them pay a high price.

Kessing, 59, was a member of the Customs Air Border Security Unit at Sydney Airport until his resignation in May 2005. Two years earlier, he and his colleagues had compiled a damning report for Canberra outlining serious security lapses at the airport, as well as surveillance blind spots and criminal activity. Despite the fear of terrorism following the 9/11 attacks in the US and the resulting focus on airport security, the report did not reach senior bureaucrats and ministers and hence remained buried. That is, until Kessing leaked it to the media soon after he resigned.

This resulted in a number of front-page stories, which came amid allegations of drug trafficking by corrupt airport staff in Sydney and suspicions that Schapelle Corby's Bali-bound baggage might have been tampered with in transit in Sydney. An embarrassed Prime Minister Howard quickly called in British international aviation security expert, Sir John Wheeler, to check out weak points at Australia's key gateways. Wheeler reported in September 2005 that, "Intelligence material, particularly from Customs, confirmed significant threats and vulnerabilities at major airports that are consistent with the reporting by *The Australian*."

Wheeler's report prompted the Federal Government to spend over \$200 million boosting Customs surveillance and setting up police command centres at major airports. It was the most extensive overhaul of airport security in Australia's history.

Kessing was totally vindicated. But a lethargic government mugged by reality always demands a victim on whom to take out its scorn. Despite its own rhetoric, and duty, the government had been neither alert nor alarmed.

Ironically, while Australian Federal Police officers were setting about fixing the problems exposed, colleagues of theirs had been put onto the scent of the leaker. Kessing was tracked down and charged. He was found guilty in a Sydney court in March 2007 and bailed to appear for sentencing on May 25. The Crown Prosecutor said that a prison sentence was on the cards. The jury apparently had trouble making a decision, but was instructed by the judge not to take into consideration the public interest dimension.

Commenting on the verdict, *The Australian's* legal affairs writer, Chris Merritt, hit the nail on the head: "Punishing whistleblowers such as Allan Kessing for protecting the public interest reeks of the vengeful act of a political pygmy ... The politicians and bureaucrats forget that the public interest is not always aligned with the interests of the government of the day."

Recently, we heard a federal Coalition member claim that Colonel Michael Kelly, the ALP candidate for Eden-Monaro, would not be looked upon kindly by many of the military voters in that electorate. The MP said they held in disdain whistleblowers like Kelly who broke their pledge of silence over such issues as torture at Abu Ghraib prison and the AWB's involvement in the oil-for-food scandal. The point that the MP missed was that Kelly did not "blow the whistle"; he was simply doing his duty as an Australian officer posted to Iraq, telling the Government what it needed to know. The fact that the Government's interests were elsewhere was a different matter entirely.

It would be interesting to hear directly from the Prime Minister what he thinks about how Colonel Kelly carried out his duty, and for that matter how Allan Kessing carried out his. With all the banter that we're subjected to on values and standards during the lead-up to an election, Mr. Howard could be sure that on issues like these

the broader electorate would be all ears. While at it, the Prime Minister might also like to tell us what he thinks about the contrast between the AFP's effectiveness in tracking down Kessing and its failure to uncover the leaker in Canberra who provided a Melbourne *Herald Sun* journalist with another sensitive report in June 2003.

Compiled by Andrew Wilkie, then an analyst with the Office of National Assessments, the report on Iraq understandably had a restricted readership. Wilkie had resigned in March 2003 over the invasion of Iraq and the report was used in an attempt to damage his reputation. Written and distributed in December 2002, all copies were duly returned, though in June 2003 Foreign Minister Alexander Downer's office requested a copy — the only such request made in the six-month period thereafter. Three days later, the *Herald Sun* article appeared, which openly referred to the secret report.

The AFP's eleven-month inquiry into the leak claimed that there was "no direct evidence to identify any of the recipients of the report as the source of the disclosure." Case closed.

It all goes back to duty and who those paid from the public purse feel they are meant to be serving.

In recent years, the currency of truth and accountability in the governance of the nation has been utterly debased, especially during John Howard's term. With an election approaching, both he and Kevin Rudd are duty-bound to tell us what they're going to do about our predicament on this front, whoever gets in.

In pondering the matter, they might consider these words from the American novelist, Norman Mailer: "Real democracy comes out of many subtle individual human battles that are fought over decades and finally over centuries ... [It] is a state of grace attained only by those countries that have a host of individuals not only ready to enjoy freedom, but to undergo the heavy labour to maintain it."

Warren Reed is a former officer with the Australian Secret Intelligence Service (ASIS).

Whistleblower faces prospect of jail

An interview with Allan Kessing, who was found guilty of leaking a report which revealed shocking breaches of airport security.

ABC Radio National, *Law Report*
29 May 2007

When whistleblowers are left hanging in the wind, where does that leave the rest of us?

Damien Carrick: Whistleblower Allan Kessing is a convicted criminal. In March a jury found him guilty of leaking a confidential report to *The Australian* newspaper back in 2005.

That report, written by Kessing, identified a range of serious breaches in security at Sydney Airport.

Kessing's report was buried by the Customs Department. It was not handed to government and did not reach the light of day until it was leaked, some 30 months after it was written.

Last Friday Kessing was back in court for a sentencing hearing. Having heard the arguments, the judge said he would consider the issues and hand down a sentence on June 14. Newspaper reports say the judge is sympathetic to imposing a prison sentence.

I spoke to Allan Kessing yesterday. He tells me this is his first broadcast interview. He says he's not looking forward to the prospect of going to jail.

Allan Kessing: Well obviously it's rather shocking; I can't say I'm looking forward to it, and I'm very surprised it would come to this.

Damien Carrick: Now I understand you've always claimed that you're not guilty of disclosing anything. Let's talk a little bit about what the jury did find you guilty of. Some years ago you worked for the Customs airport security unit, and you wrote a report about airport security; what did you find?

Allan Kessing: Well I wrote two reports. One focused on a specific group and the other took a random sample of people in all the areas behind what is called the sterile area, that is, areas to which the public do not have access. I can't actually say what I found, except what was in the papers, because that would constitute another

offence; this is how draconian the law is. I can't talk about anything that I learned during my employment as a Customs officer.

Damien Carrick: Well I understand the report talked about the employment of baggage handlers with criminal records; theft of luggage; drug trafficking; a whole range of breaches of security.

Allan Kessing: Yes, this is correct.

Damien Carrick: And what did the Department do? As I understand it, the Department effectively sat on your report. They didn't even show it to the Federal government, is that right?

Allan Kessing: That's correct. In fact it did not get out of Sydney Airport. They didn't even show it to their superiors in Canberra, as was evidenced by the procession of senior managers who came at my trial. A half a dozen of them all swore on oath that they were unaware of the existence of the reports until the media leaks. You know, 30 months after they were written.

Damien Carrick: So 30 months after you'd written your report and submitted it to the Department, somebody (you say not you) leaked the documents to *The Australian* newspaper, and of course the huge furore this caused, the front page banner headlines it's caused, led to the government calling in leading UK security expert Sir John Wheeler, to write a report, which confirmed your findings, and that prompted the government to spend something like \$200-million in boosting airport security. It was probably the most extensive overhaul of Australian airport security ever.

Allan Kessing: Well this is what we find, yes. But in fact at the sentencing hearing on Friday though, they sent along the New South Wales Regional Director of Customs, Gail Batman, who actually denied once again on oath, that the Wheeler Report was solely as a result of those revelations. They were trying to even play down the reasons for the Wheeler Report being instituted, although as he makes clear in his opening statement in the Wheeler Report, and as the government made clear, it was solely as a result of those leaks.

Damien Carrick: Well how do you feel about the prospect of going to jail?

Allan Kessing: Well as I said, I retired two years ago and the last two years have been absolute hell. I've been on tenterhooks the whole time, and the thought of finishing up two years of waiting to be judged with a jail sentence is just beyond credence. I would not have thought it would happen in a country like Australia. It reminds me of the opening lines to Franz Kafka's novel *The Trial*: "Somebody has been telling lies about K, for without his knowing why, he was under sentence."

Damien Carrick: But playing devil's advocate, I think the judge or the prosecutor said last Friday, Look, we need to deter other people from leaking confidential reports to the media, we need to send a message.

Allan Kessing: Yes, well exactly. The Crown Prosecutor, Lincoln Crowley, made exactly that point, that it was necessary for a custodial sentence to deter other potential whistleblowers amongst the public service. My barrister made the point that he said he could see nothing wrong with exposing our government agency to criticism if the criticism was justified through maladministration and/or incompetence.

Damien Carrick: The jury, I understand, back in March/April, took three days to deliberate in your case; a reasonable amount of time. I mean they had trouble coming to a verdict, and they asked the judge quite a few questions.

Allan Kessing: I think it was 13 questions in all, yes.

Damien Carrick: I understand they were told by the judge not to take into account the public interest argument. In other words, the idea that if you did disclose the documents, which you deny, you should be able to rely on a public interest defence, that you in effect were doing the community an enormous service by alerting everyone to the report.

Allan Kessing: That's correct. And in fact his very last instructions were "You have been unable to reach a unanimous version. I urge you to stay behind; I'll order an evening meal for you, but you must not take into account the public interest." So basically they were going to be there that evening, and they came back half an hour later with the guilty verdict

although they'd said twice they were unable to reach a unanimous decision.

Damien Carrick: I understand that in the prosecution's submissions to the court on the issue of sentencing, last Friday, the prosecution said "Look, there was a massive potential to disrupt operations by various agencies, perhaps security agencies, and what you did was potentially extremely dangerous."

Allan Kessing: Yes, it's basically the argument about why do you throw in wooffle dust and keep away dinosaurs, but there aren't any dinosaurs. Well it shows you how effective the wooffle dust is.

Damien Carrick: You maintain that the leaking of the document did not lead to any risks of existing operations?

Allan Kessing: I don't see how it could, given the documents were 30 months old. That's the point. The reports that I wrote were based upon research conducted prior to 2002 and the early part of 2003. And given that they weren't acted upon, to say that they were operations going on in the latter half of 2005 is just ludicrous.

Damien Carrick: Now obviously you're concentrating on your own predicament right now, but what does this saga bring to mind for you about the state of accountability, transparency, fairness, in Australia today?

Allan Kessing: Well it basically shows that anybody who knows of maladministration or corruption either in the private or the public sector, would be well advised to say nothing, do nothing, keep your head down and look after your career and your mortgage. It takes away the individual's responsibility and participation in what was once a constitutional democracy. We are being governed by fear at the moment; it's what the government wants and everybody else has to just — you know, head down, tail up.

Damien Carrick: But we can't have people willy nilly leaking information here, there and everywhere, without any punishment. I mean there are reasons for the laws that we have about leaking information.

Allan Kessing: I agree that a lot of information should not be made public, but that is not the case here. In fact there was a Lord Denning, Master of the Rolls, in Britain, back in the 1960s,

made the point that a servant is not responsible for covering up the criminality of his master. And that was a landmark decision in the Privy Council. And in this case the criminality, or the incompetence, or maladministration, whatever you want to call it, deserved to be exposed by somebody. But most people, as I say, they have careers, they have mortgages, to worry about.

Damien Carrick: And that leads to people not speaking out and perhaps the public interest not being served.

Allan Kessing: Well I think it was well illustrated in the Nuremberg trials that "I was only following orders" is not an adequate defence. Now you may think that's a little overblown, but the point is, when individuals do not rely upon their conscience, then for evil to succeed is only necessary that good men do nothing.

Damien Carrick: You would actually see this issue in those grander terms, that this is actually of profound importance to our democracy.

Allan Kessing: I think it is a constitutional point which must be brought out, that the government is only the servant of the people, and it is not, it should not be, protected from their embarrassment. Certainly it should be — information needs to be protected, but only when there is a valid reason. There is no blanket reason to cover up maladministration when the only people affected would be the maladministrators.

Damien Carrick: You've received support from across the media: Janet Albrechtson from *The Australian* newspaper wrote, well she suggested in one of her articles or pieces, that members of the government should think about you every time they boarded an aeroplane, and they should be grateful to you for what you've done, because she was saying effectively we're all safer for what you've done.

Allan Kessing: I don't think there's any argument about that. I mean the mere fact that the government said "Oh yes, all recommendations accepted, here's \$200-million." They wouldn't do that if there was not a problem to be addressed.

Damien Carrick: Can I ask, you say you didn't do this; but who do you think did do it?

Allan Kessing: Well, I'm not going to say who, but —

Damien Carrick: Do you know who did it?

Allan Kessing: Yes.

Damien Carrick: Why do you think the finger was pointed at you?

Allan Kessing: I was an easy target, I was retired, I had never been a quiet, acquiescent type, so yes I think I was just the easiest target.

Damien Carrick: How many people saw the report?

Allan Kessing: According to the government, at least 73. It was flying around the unsecure Customs email system from 2003 until mid-2005, in contravention of Customs' own security regulations. It should not have been put on the email system as was testified by various people at the trial. So it was flying around the email system, which is a simple matter of copying and sending it on to the next person. There were an unknown number of hard copies of the final reports, and an unknown number of drafts, which were left on open shelves in open offices, as once again, as testified.

Damien Carrick: Allan Kessing, who has been found guilty of leaking a confidential report. He's going back to court on 14th June to receive his sentence.

No telltales allowed

Mike O'Connor

Courier-Mail, 2 April 2007, p. 19

IF YOU have evidence of corruption, mismanagement or any criminal activity in a government agency, then look the other way.

If you do the right thing and attempt to see justice done, you'll end up in court and may well be sent to prison, which is what you might expect to happen if you blew the whistle on wrongdoing in Russia.

In a bastion of democracy such as Australia, of course, you would be lauded as a hero and mentioned in the New Year's Honours list for your public-spirited devotion to duty.

Actually, no, for the odds are that, as in Russia, you'll be hauled before the courts, found guilty of leaking government material and sent to jail.

This is the fate that awaits former customs officer Allan Kessing, who became aware of major security lapses at Australia's major airports, particularly Sydney.

When stories of organised criminal gangs operating at Sydney Airport began to appear in the media, the ensuring publicity forced the Federal Government to commission a report which found that the allegations that had been made by the unnamed sources were substantially true.

As a result, the Government spent \$200 million increasing internal airport security and surveillance of all the luggage handling areas.

The travelling public had been done a great service but the Government was less interested in luggage tampering than it was in finding out who had blown the whistle on the appalling state of security at the country's busiest airport.

Last week Kessing was found guilty of the unlawful disclosure of information by a former Commonwealth officer.

When the stories broke, the Government was quick to set the Australian Federal Police on the trail of the source of the leaks.

You could be forgiven for thinking that given the lax security which had been exposed, in spite of grandstanding by the Federal Government as to what a safe environment our airports represented, the AFP officers' time would have been better spent remedying the identified problems.

The whistleblower, however, became the focus of the AFP's energies because the Government wanted to make an example of whoever had leaked the information.

The strategy is obvious — place Kessing's head on a pike to remind any other public servants who might be contemplating revealing the Government's inadequacies of the fate that awaits them.

Public interest be damned. It's the political survival of the Government that counts.

It took the Sydney jury three days to reach a verdict, an indication perhaps, of the difficulty it faced in reaching the decision it was virtually forced to adopt because of the way the legislation is framed.

The Queensland Government, staunch defender of the public good, has not been slow to realise the danger posed by whistleblowers.

If it hadn't been for them, it would not have suffered the irritation of the scandal over Dr Jayant Patel.

Premier Peter Beattie and his band of tail-wagging head-nodders believe that whistleblowers should not be seen and most certainly not heard.

To ensure this, Beattie has introduced what has laughingly been described as "guidelines" to gag parliamentarians, preventing any who have been contacted by whistleblowers from revealing to the Parliament what they have been told.

The new rules warn the Members of Parliament that they are to avoid revealing any information provided by a whistleblower which could interfere with an investigation or cause unnecessary damage to a person's reputation.

The Government claims these are merely guidelines but Clerk of the Queensland Parliament Neil Laurie says there was nothing to prevent the Government-appointed Speaker Mike Reynolds from enforcing them.

Guidelines? If Beattie had no intention of using them to silence whistleblowers who have information which might be politically harmful to the Government, he would not have introduced them.

Again, the people are treated with contempt and presumed to be fools more interested in the fate of the Broncos or the Lions than the right of their parliamentarians to expose wrongdoings.

I look forward to the first time the Opposition, armed with information from a public-spirited whistleblower that could embarrass the Government, attempts to alert the people of Queensland by raising the matter in Parliament.

My bet is that the Speaker will use the "guidelines" to silence the Opposition and effectively hide the Government from scrutiny.

Expect the usual hand-on-heart, "Let-me-be-perfectly-honest-about-this" protestations of innocence by the Premier at these suggestions.

The real intent, however, is plain — silence all criticism.

Verdict is against the public interest

Chris Merritt

The Australian, 28 March 2007, p. 3

THE real problem highlighted in this guilty verdict concerns the Howard Government's authoritarian approach to the free flow of information.

Public servants who reveal information about flawed public administration deserve medals — not criminal convictions.

Their actions force embarrassed governments to remedy their incompetent administration of the community's assets.

Punishing whistleblowers such as Allan Kessing for protecting the public interest reeks of the vengeful act of a political pygmy.

That's bad enough. But so long as federal law forces juries to impose guilty verdicts on good citizens, the law itself will come into disrepute.

Juries are not fools. They know right from wrong. And in this case, the long delay in reaching the verdict strongly suggests at least some members of the jury agonised about allowing themselves to be part of such a repugnant process.

Whistleblowers serve the public interest. Yet in case after case, the Government has refused to distinguish between high-minded actions such as Kessing's and mischievous leaks that can damage the public interest.

The politicians and bureaucrats forget that the public interest is not always aligned with the interests of the government of the day.

The flaw in the Howard Government's desperate efforts to control the free flow of information has long been apparent.

Last November, three of the nation's leading ombudsmen — from the commonwealth, NSW and Queensland — called for a national approach to the revision of whistleblower protection.

There are nine inconsistent pieces of legislation around the nation providing some form of protection for those like Kessing who reveal information in the public interest.

The commonwealth's law is the worst.

The three ombudsmen, with the backing of the Australian Research Council, are working on a proposal for reforming the laws.

One of those leading the project is Alexander Brown, from Griffith University. Here is his assessment of the shocking state of Canberra's whistleblower laws: "At the moment, commonwealth officials, from my point of view, they are excused if they want to leak. They really have no other internal mechanisms.

"The commonwealth has no crime and misconduct commission. If you are a commonwealth officer and you are concerned about security lapses, who are you meant to go to?

"What guarantee do they have they will not be dobbed in to their own managers?"

Police corruption rife in Qld, says former officer

ABC Radio PM, 16 April 2007
(from ABC Online)

PETER CAVE: A key whistleblower at the Fitzgerald Royal Commission into Police Corruption in Queensland says it's time to repeat the process.

Retired police officer Col Dillon served more than three decades in the Queensland police force, and is one of Australia's most highly decorated Indigenous police officers.

He's told the ABC's Message Stick program, corruption in the force is still very much alive.

He's also called for an inquiry to help mend relations between the police and the Indigenous communities.

Lindy Kerin reports.

LINDY KERIN: When he retired six years ago, Col Dillon was the country's highest-ranking Indigenous police officer.

He rose to national prominence during the 1980s, when he blew the whistle on police corruption at the Fitzgerald Royal Commission.

Now Col Dillon has told the ABC's Message Stick program, things haven't improved and that police corruption in Queensland is rife.

COL DILLON: The culture that was pre-Fitzgerald is there today and every bit as strong as what it was pre-Fitzgerald. It may have softened a little

bit after some of the reform processes come into place and so forth, but there's been backsliding of a great magnitude in terms of the police doing the services in this State.

LINDY KERIN: Col Dillon is now documenting his policing career.

He says his tell-all book will name corrupt figures who weren't identified in the Fitzgerald inquiry.

COL DILLON: There will be people out there that will be concerned and have some apprehension about what may be put to paper by me because there's no doubt in my mind, and I know for a fact that there are people when the net was cast to haul in the corrupt, there were quite a few that got away.

LINDY KERIN: Last December Col Dillon quit his job as a State Government adviser in Queensland. He resigned in protest over the handling of the death in custody of an Aboriginal man on Palm Island.

Col Dillon says he's deeply concerned about the relationship between Queensland police and the Indigenous community.

He says it's time for an inquiry into how the Queensland Police Service operates.

COL DILLON: To my mind I would say this without any fear of contradiction that it is high time again for another far reaching inquiry into our police service and the way that it operates.

LINDY KERIN: The Queensland Police Service has declined to respond to Col Dillon's comments. So too has the State's Police Union.

A spokesman Ross Musgrove says the union doesn't want to help promote Col Dillon's book.

He says if the former police officer has a legitimate complaint, he should take it to the Queensland Crime and Misconduct Commission.

But the President of the Australian Council for Civil Liberties, Terry O'Gorman, says Col Dillon's comments should be taken seriously.

TERRY O'GORMAN: Col Dillon's got an enormous store of credibility.

He was an inspector of police and an Aboriginal inspector of police in the Licensing Squad when he blew the whistle on corruption.

He stayed in the police for a period of time after that.

When he left the police he worked in Indigenous Affairs for the Queensland Government, while still keeping in close contact with the Queensland Police Service.

He's got enormous credibility and the Police Minister and the Police Commissioner cannot simply brush his well-founded criticisms aside.

And if he says that the Crime and Misconduct Commission is so compromised because it's over time fallen into a pretty ineffective oversight body against the Queensland police then perhaps an external inquiry needs to be set up.

PETER CAVE: Terry O'Gorman from the Australian Council for Civil Liberties ending that report from Lindy Kerin.

In a statement this afternoon, the Queensland Police Minister said she hadn't yet seen the program in which he makes these claims and would watch it when it goes to air tonight.

Judy Spence says if Mr Dillon is has any information on corruption in the Queensland Police Service he should report it to the appropriate bodies.

Diplomat claims he was told to lie

Markus Mannheim
Canberra Times, 19 May 2007, p. 1

A senior diplomat who refused to break the law by lying about Australia's aid program was later denied an extension to his overseas posting in apparent retribution.

The Federal Government pulled the head of its aid program in East Timor, Peter Ellis, from the embassy in Dili after he insisted he would not lie to a local human rights group about why its funding was cut.

Foreign Minister Alexander Downer decided in 2005 to strip Forum Tau Matan of a \$65,830 grant after learning the group had previously criticised Australia's approach to maritime boundary negotiations.

Forum Tau Matan and 12 other Timorese organisations signed a petition in 2004 that urged Australia to respect international law.

The Australian Public Service Commission is now investigating claims that senior officials of the Department of Foreign Affairs and Trade and AusAID advised Mr Ellis to give the group false reasons for why its contract was broken.

Public servants who lie can be fined, demoted or sacked under Commonwealth law.

Mr Ellis says he refused the direction and AusAID took the unusual step last June of denying him a one-year extension of his posting.

He says the action cost him about \$100,000 in lost earnings and allowances.

The Canberra Times asked AusAID whether senior officers had told Mr Ellis to be deliberately dishonest in breach of the Public Service Act.

A spokesman initially refused to deny the claim, but said the Government's decision to break the group's contract took into account its public criticism of Australia.

The spokesman later said that neither the agency nor the Department of Foreign Affairs accepted the claim that Mr Ellis had been encouraged to lie. He refused to comment on Mr Ellis's departure from East Timor, citing privacy reasons.

Mr Ellis says he was told his superiors had not endorsed an extension to his posting as they feared he might again refuse such instructions. Mr Ellis, a Tetum speaker whose experience was lauded by the East Timorese Government and the World Bank, has since left AusAID his employer for 10 years for work overseas.

He told *The Canberra Times* he felt he had to take a stand against senior bureaucrats' contempt for their own code of conduct.

"If public servants start disobeying legislation just because they think they know best and can judge for themselves when to be honest and when to lie, we're on a very slippery slope," he said.

"That principle is more important than any possible damage to my career. I didn't have any hesitation in drawing a line in the sand on something as clear as this."

He said he was disappointed but unsurprised by the official retaliation. He said the public service needed stronger protection for those who

raised legitimate questions about their managers.

"Nearly all public servants have these fears. They see serious breaches of the code of conduct but don't report them because they know it means the end of their career.

"If I'd had kids and a mortgage it might have been much harder to stand up on the issue."

Opposition international development spokesman Bob McMullan said he had raised the matter with Mr Downer but received few details in response.

"There is a national interest in the [public service] code of conduct being followed and those that stand up for it being protected," he said. Mr McMullan said Mr Downer also needed to explain why he had cut the East Timor group's funding just six months after publicly praising it.

"If it was simply punishment for criticising Australia, it was an abuse of process and a misuse of taxpayer's money," he said. "If the original decision to fund them was meritorious, then the case for deciding on withdrawal was most improper."

Mr Downer referred inquiries to AusAID, but said in a statement he had confidence in the agency's handling of the matter. A request to interview the ambassador to East Timor, Margaret Twomey, was refused.

Transparency or just an illusion?

Des Houghton
Courier-Mail,

24-25 March 2007, p. 34

CLAIMS of transparency and accountability by the State Government are a sham, according to a veteran public servant who worked in the state integrity unit.

Mark Lauchs says most accountability institutions set up by governments are designed to "give the illusion of government transparency while operating to mask bad management or corruption."

Lauchs, 42, says most of the laws are "for show."

"There was no serious intent to make these things work," he says.

"The whistleblower legislation is more for show than to encourage disclosures.



Mark Lauchs

"The Government has been hypocritical in parliament; it never really supported whistleblower protection."

He says Police Minister Judy Spence and former health minister Wendy Edmond were outwardly hostile to whistleblowers in comments they made in parliament.

Lauchs is now an academic with the Queensland University of Technology School of Justice and has spent the past three years studying accountability in the public service.

After working in the Justice Department and the Premier's Department under four premiers, Lauchs concludes: "A government does not have to be accountable as long as they can convince the voters they are honest."

He says Sir Joh Bjelke-Petersen worked with an auditor-general and set up the Ombudsman system and the Financial Administration and Audit Act of 1977.

"These made sure the books balanced across Queensland but did not and could not have exposed the endemic corruption which was kept under the radar," he says.

Lauchs says the same tactics were used after the Fitzgerald inquiry.

The Government can claim credit for having a Freedom of Information Act but its effectiveness has been diluted through exemptions for Cabinet or Executive Council "considerations."

"This means government can effectively put a sensitive document out of harm's way and make it inaccessible to the public for 30 years," Lauchs says.

He adds it is possible to disguise corruption using FOI exemptions.

Deals of major financial payments are kept from public eyes under commercial-in-confidence rules.

“Another example is the Public Sector Ethics Act of 1994. Sounds good, but it carries ethical obligations without sanctions and does not set benchmarks for success. The Act does not actually increase the likelihood of misconduct being revealed or prevented,” says Lauchs. He believes Premier Peter Beattie has neglected a key whistleblower obligation.

“Under the Whistleblower Protection Act the Premier must report every year on the administration of the Act in his annual report,” he says.

“It’s never been done.

“I pointed this out and got a nasty reply from the Premier saying, basically, piss off.”

Lauchs is publishing his research as part of his PhD. He describes it as “a PhD in the bleeding obvious.”

Whistleblower doctors face jail threat

Chris Hingston

Australian Doctor, 20 April 2007, p. 3

ATTEMPTS to gag doctors serving on advisory committees to the proposed Trans-Tasman therapeutic goods regulator have sparked calls for greater transparency in the drug approval process.

Members of expert committees could face penalties of up to two years’ imprisonment for “unauthorised disclosure” of information under draft legislation establishing the Australia New Zealand Therapeutic Products Authority, which will replace the Therapeutic Goods Administration.

Clinical pharmacologist Professor David Henry, from the University of Newcastle in NSW, said the provisions went against global trends for more open disclosure of information on drug approvals.

A TGA spokeswoman said similar penalties could have applied to members of its expert committees under the Crimes Act.

However, Professor Henry said the introduction of the Trans-Tasman authority was an opportunity to make the regulation process more transpar-

ent, calling for more information to be posted on the new regulator’s web site than happened with the TGA.

Dr Thomas Faunce, a senior lecturer in medicine and law at the Australian National University, said if similar legislation had existed in the US, the problems with rofecoxib (Vioxx) would never have been exposed and “people would still be dying.”

“Whistleblowing is the single most potent act in Australian health care quality and safety,” Dr Faunce said.

Professor Martin Tattersall, the chairman of the Australian Drug Evaluation Committee which advises the TGA, said ADEC was in favour of greater transparency in the regulation process — as was the case in the US — but the fact that much of the information was considered commercial-in-confidence had been a barrier.

In rare circumstances, doctors on expert committees could face “competing responsibilities” if they believed a medical colleague needed access to confidential information, Professor Tattersall said.

“Some might feel obligated by patient safety to disclose this information ... It is an issue of conscience,” he said.

A Medicines Australia spokeswoman said commercial-in-confidence information should be protected when submitted to regulators.

New helpline for those who blow whistle on research fraud

Bryan Christie

BMJ, Volume 334,
19 May 2007, p. 1023

A confidential helpline has been established in the United Kingdom to offer advice and guidance to whistleblowers who think they may have uncovered cases of misconduct in medical research.

it will also be a source of expert advice to universities, the NHS [National Health Service], and private companies in helping them respond effectively to allegations of research misconduct.

The helpline, which was set up by the UK Panel for Research Integrity in

Health and Biomedical Sciences and will be staffed by the Research Integrity Office, was launched last week at a meeting in Edinburgh.

Michael Farthing, chairman of the panel’s planning group and pro-vice chancellor for medicine at the University of London, said that although cases of research misconduct are uncommon, they can have huge consequences in human and financial terms. He described the helpline as “an attempt to bring a bit more transparency to how we deal with research misconduct in the UK.”

He added, “We want to open up the debate, and this is another way of helping [to] do that.”

Professor Farthing said that nearly all of the major cases of research misconduct have been exposed by whistleblowers but that often such people did not know where to turn to for help. “Many of us who have been involved in this area have had quite a lot of personal experience of people who have phoned us in desperation because they have experienced frustration in their own institution. Having a third party involved — even in an advisory capacity — can unlock the situation.”

The helpline is intended to provide that sort of support. It will offer guidance in the first instance and can refer callers, if necessary, to an adviser chosen from a register of experts with wide experience of handling cases of misconduct.

Professor Farthing said it is difficult to predict how much use will be made of the helpline. “It may be 20-30 calls a year, but it could be considerably less. It is difficult to know how many people out there have concerns, but I would not expect [the number] to be enormous.”

All calls will be answered in the first instance by Andy Stainthorpe, the project’s director and head of the Research Integrity Office. He said, “The telephone line is a quick and straightforward way of putting people in touch with the experts and will of course be totally confidential.”

The helpline’s number is 0844 7700644 and is open 8am to 8pm, Monday to Friday.

New whistleblower surfaces at chemical weapon depot

Worker safety, environmental violations and data falsification at Kentucky facility

Public Employees for Environmental Responsibility (www.peer.org)
News release, 10 May 2007

Washington, DC — A top scientist overseeing chemical weapons storage operations at the Bluegrass Army Depot claims he was fired for reporting worker safety, environmental and data integrity violations, according to legal filings released today by Public Employees for Environmental Responsibility (PEER). The troubled Army facility in Kentucky is already the subject of a federal grand jury looking into these and other lapses at the repository for storing 500 tons of the world's deadliest chemical warfare agents.

Kim Schafermeyer, an analytical chemist and industrial hygienist, served at Bluegrass until July 2006 when he was abruptly dismissed just prior to the end of his one year probationary period. In his April 6, 2007 affidavit filed in support of his legal complaint, Schafermeyer outlines chronic safety and pollution concerns, including:

- Direct venting of chemical warfare agent expelled from testing equipment directly into laboratory areas occupied by workers and visitors;
- Improper handling of air and waste water samples; and
- Flawed monitoring data protocols, including apparent creation of figures when data gaps occurred.

Schafermeyer also describes supervisors and certifying officials with no identifiable qualifications, the misuse of congressionally appropriated funds (obtained by U.S. Senator Jim Bunning of Kentucky) earmarked for equipment upgrades and threats by base managers in order to stifle reports of any problems.

"The command at Bluegrass appears to be far more concerned with containing the truth about conditions inside the depot than with containing

the lethal chemicals it is supposed to be safeguarding," stated PEER Executive Director Jeff Ruch, whose organization is representing depot whistleblowers. "The picture emerging from the sworn statements of depot workers is downright scary."

In addition to the criminal grand jury convened by the U.S. Justice Department, other depot employees have come forward with information about the inability to monitor conditions inside the "igloos" where VX nerve gas and other agents are stored in their original rockets.

Schafermeyer's case is currently awaiting hearing before a U.S. Department of Labor administrative law judge, although it may be sent back to the federal civil service authorities for processing under the Whistleblower Protection Act rather than under federal environmental laws.

"There will be many more revelations in the coming days out of the chemical weapons operation at Bluegrass," Ruch added, noting that PEER is now taking sworn statements from current and former depot managers. "Incredibly, Blue Grass managers are still telling employees that safety and environmental considerations detract from the facility mission."

The censorship of science undermines democracy

Francesca Grifo

Statesman Journal (Salem, Oregon),
11 March 2007

At a major congressional hearing in January, a prominent NASA climatologist spoke publicly about attempts by agency officials to interfere with his ability to release his research results that described impact of global warming on Antarctica.

Sadly, the scientist is not alone. Growing evidence shows that over the past several years, political interference in federal government science has become both widespread and pervasive. To ensure that science — one of the cornerstones of American democracy — continues to serve society, public officials must act to defend taxpayer-funded science from political interference.

The Bush administration has censored scientists, suppressed reports, and altered scientific documents on issues ranging from mercury pollution to childhood lead poisoning to drug safety. And for every scientist who is able to speak out against political interference in his or her work, scores of others have been pressured into silence and don't have the standing that would allow them to speak without retribution.

Recent surveys by the Union of Concerned Scientists found that nearly 40 percent (699) of more than 1,800 scientists working at nine federal agencies report that they fear retaliation for openly expressing concerns about their agency's work. In a survey of climate scientists alone, 150 scientists reported at least 456 instances of political interference in their research or the communication of their results. These numbers should be zero.

Just as troubling are actions that politicise science by limiting public access to information and hindering public oversight. In its second term, the administration has closed federal scientific libraries that housed unique documents. It significantly reduced the public's right to know about the chemicals that factories release into our neighbourhoods. And new administrative procedures effectively keep science out of many critical decisions.

Take, for example, the air we breathe. Environmental Protection Agency staff scientists have worked for decades with an independent scientific advisory committee to review the best available science on air pollutants and recommend appropriate pollution control standards. Last year, when the committee scientists objected to an EPA decision to set soot pollution standards that twisted the science and failed to protect public health, the agency responded with a new policy that significantly limits scientific input into the process.

In a more recent example, President Bush's January amendments to an existing executive order could further centralise regulatory decision-making power in the White House. The new rules place political appointees deeper inside federal scientific agencies where they can more easily prevent scientific data from ever seeing the light of day.

In response, nearly 12,000 scientists, including 52 Nobel laureates and science advisers to both Republican and Democratic presidents dating back 50 years, signed a statement condemning this abuse and calling for reform. "The distortion of scientific knowledge for partisan political ends must cease," they said, "if the public is to be properly informed about issues central to its well being, and the nation is to benefit fully from its heavy investment in scientific research and education."

Indeed, our nation's prosperity is based on a foundation of independent, unfettered scientific discovery. Decision-makers must have access to the best available scientific information to make fully informed decisions that affect public health and the environment.

It's time for action. There are no laws that protect federal scientists from retaliation for truthfully and publicly reporting their scientific results. Congress should act quickly to pass strong whistleblower protections for federal scientists who report scientific abuse.

Restoring scientific integrity to federal policy making will also take the persistent and energetic engagement of the next president. Presidential candidates should promise a zero tolerance policy for the manipulation and suppression of taxpayer-funded science. Candidates must commit to a philosophy of open government that allows scientists to speak freely about their scientific research and enables science to effectively inform public policy.

This is not an abstract debate. In the coming year, the administration will be faced with a number of critical science-based decisions. The EPA will set standards for pollution from lead and ozone. The Food and Drug Administration will continue to determine the safety of new prescription drugs and medical devices. And the Occupational Safety and Health Administration will debate regulations that protect the health and safety of workers.

Scientific freedom — the ability of scientists to conduct research and share their results free from government interference or censorship — is vital to a democracy. The thousands of scien-

tists employed by the federal government represent a tremendous resource. Without a culture of scientific independence, public understanding of scientific issues will suffer, and our public officials will be unable to meet America's most pressing challenges.

Dr. Francesca Grifo is a senior scientist at the Union of Concerned Scientists and director of the UCS Scientific Integrity Program in Washington.

Responding to a moral stand

Ira Chaleff

Editor's introduction

Ira Chaleff is a US management consultant. He worked with the Congressional Management Foundation, which provides management training to political leaders, and later became executive director and then chair of the board.

In his book *The Courageous Follower: Standing up to and for our Leaders* (San Francisco: Barrett-Koehler Publishers, 2003, 2nd edition), Chaleff provides a stimulating treatment of how to be a good follower. He uses the word follower rather than employee and the word leader rather than boss, supervisor or employer. For Chaleff, a good follower aims to help the organisation by serving when appropriate but gently and effectively challenging leaders as needed. This sort of approach is what most whistleblowers should try first.

Chaleff recommends developing the courage to reveal truths to leaders by exercising it initially on small things. It can be valuable to build trust by showing care and concern, so that sensitive issues can be dealt with later.

But Chaleff recognises that sometimes gentle, careful trust-building will not be successful, and followers should be prepared to take a moral stand, challenging their leaders, resigning or blowing the whistle.

The Courageous Follower is written in an abstract style. It has some generic case studies and many examples of questions to ask oneself and ways to approach leaders.

In the final chapter, Chaleff turns his attention from followers to leaders. He provides advice for leaders who want to obtain the most from their followers. In the section reprinted here, from pages 215-217, Chaleff tells how a leader should respond to a follower

who takes a moral stand — in other words how a supervisor *should* respond to a whistleblower. Before speaking out, it would be worth reading *The Courageous Follower* — and giving a copy to your boss.

Managers who adhere to Chaleff's protocol do exist. The challenge for courageous followers is to encourage this sort of response. — *Brian Martin*

A defining moment for leadership occurs when it is confronted with a moral stand by a follower. What leadership does next may affect the fate of the organization and its leaders for years to come.

If followers feel the need to take a moral stand, leadership has already missed or closed itself off to many earlier signals. This may be its last chance to pay attention. But it is a great challenge to listen to the criticism implicit in a moral stand. If the stand taken is directly related to your actions as leader, it will, naturally, trigger impulses of self-defense or self-preservation. If the moral stand brings to your attention serious charges against other levels of leadership, it may produce a reaction of shock, denial, or conflicted loyalties.

A common response is to devalue the individuals taking the stand. It is the easiest and also the worst possible response. One can always find flaws in individuals, their case, or their methods. These must be put into the context of the fact that individuals taking a courageous stand are risking a lot and are unlikely to be taking the stand gratuitously. Seeking to understand what is valid about their concerns, rather than focusing on what is not valid, must come first.

Another common response is to devalue the charges. They may seem implausible, exaggerated, or even hysterical and outrageous. This may be so. But it is the unthinkable that can sometimes go unnoticed and do terrible damage to an organization by the time it eventually comes to attention. Do not dismiss charges that seem outlandish until you have conducted a careful, not cursory, investigation. And do not devalue charges that may seem plausible but relatively unimportant to you. They are clearly important to someone else who just may be a better weather vane of public sentiment than you.

The moral stand may take the range of forms we have examined, including refusing to cooperate in an activity, bringing a situation to the attention of a higher level within the organization, and threatening to publicly resign if a situation is not remedied. Just as it is useful to have procedures in place for responding to potential crises, it is useful to have a procedure for responding to a moral confrontation to the organization or its individual officers. Here is a possible response protocol:

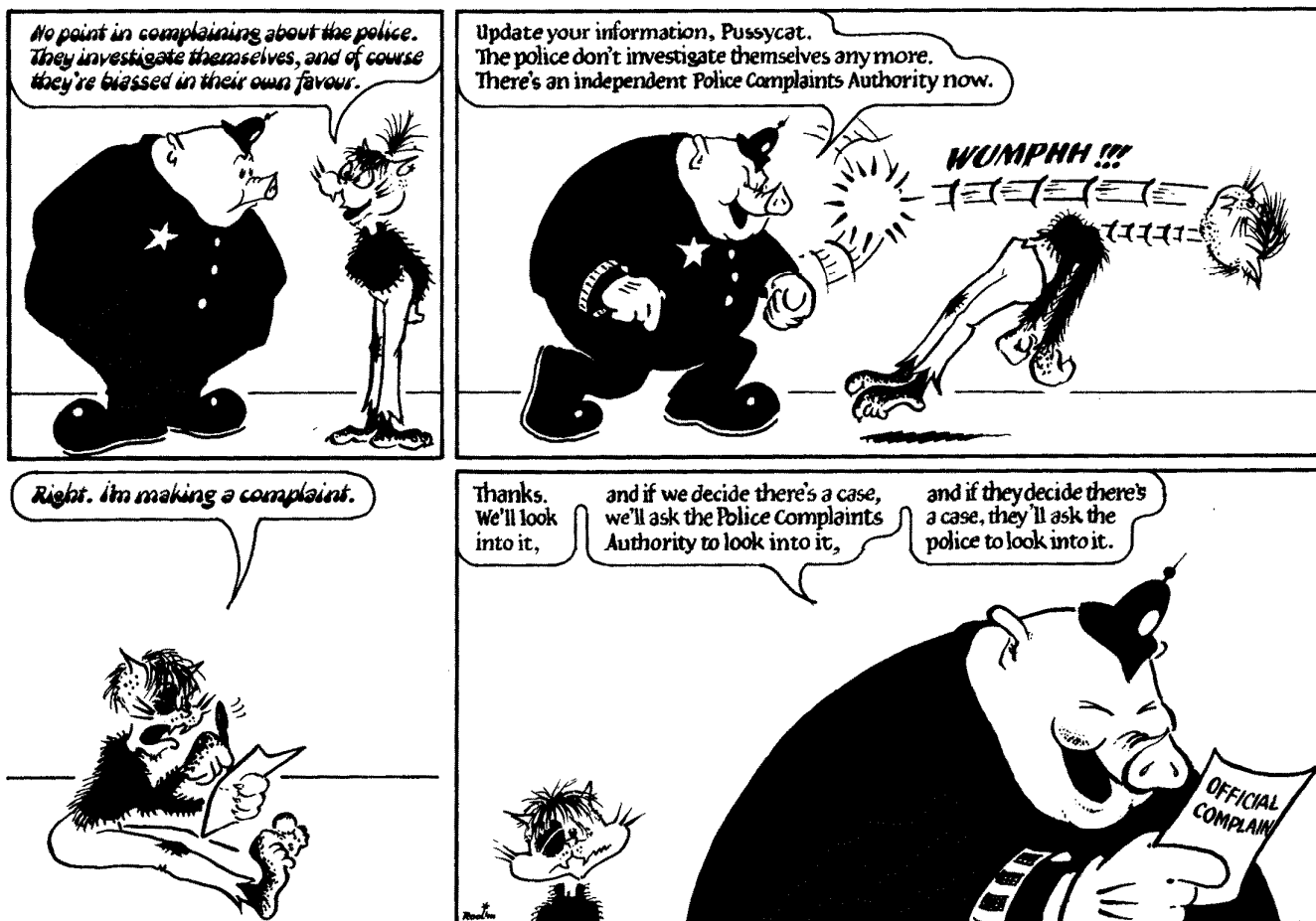
- Separate the message from the messenger. Pay careful attention to the content regardless of your view of the messenger.
- Listen both to the content and to the strength of feelings about the matter. The seriousness of the situation is better gauged by both factors.
- Regardless of your initial reaction, promise to get back to the individ-

ual *personally*, and commit to a time frame for doing so.

- Avoid any impulse to take precipitous and poorly advised damage control measures, such as document destruction.
- Decide which advisers to consult, bearing in mind as necessary which relationships confer legal protections for privileged communications.
- With the help of your advisers, gather any additional information you need to understand the full scope of the situation.
- With this additional information, play out the potential consequences, including best-case and worst-case scenarios, avoiding any tendency to denial.
- Review and restate the core values that will guide your course of action. Generate two or three options for consideration that respect these values, and respond sufficiently to the gravity of the situation.

- Choose the course of action that best serves the common purpose, and act with the vigor, courage, and imagination the situation warrants.
- Report back *personally* to the individual or individuals whose moral stand provided the catalyst for your actions.
- As the situation progresses, credit the courageous followers who took the moral stand, while accepting responsibility personally or corporately for the wrong actions now being corrected.

Such a protocol may be executed in as little as several hours or as long as several weeks. Time is not generally on your side in these situations, and speed can be as important as proper deliberation. The crucial act of leadership is to respond to a moral stand in an equally principled manner — and meet courage with courage.



Donald Room, *Wildcat: ABC of Bosses* (London: Freedom Press, 1991), p. 36

A legal trap for whistleblowers

Peter Bennett

There is a problem with the “no win, no fee” model, in which lawyers do not charge you unless you win the case.

An advocate can win a settlement of \$10,000 for you but then charge you \$7,000 for the win. You get \$3000.

Unless the settlement is for an amount and a separate payment for costs (legal or other expenses), the no-win-no-fee arrangement can be a real trap.

Also there is the risk that if you pull out of the process at any time, the solicitor (or advocate) will charge you the *full* costs for their time up till that date. This is a real disadvantage and a major risk.

Last year I dealt with a medical professional who contacted me for advice re whistleblowing. She only wanted to know how to get matters into the media.

I attempted to ascertain what she was doing to protect herself and what legal action she was taking or proposed to take. I asked her to join Whistleblowers Australia but she was absolutely confident she could manage on her own.

She did not want to discuss those matters and claimed she had everything under control and only wanted to get matters into the paper. I did not offer any advice on that aspect. Apparently she only threatened to make public statements.

She contacted me more recently after taking a package offered by her employer and negotiated by her solicitor. She had also signed a no-win-no-fee contract with the solicitor.

After settlement of the package she is barred from making public comment, the problem she complained about is still going on, her workmates are totally frightened to make any comments, she has lost her job, her file is marked to indicate that she was an unsatisfactory employee, she has no references and the solicitor has taken all but a few thousand dollars of the settlement. If she makes any public comment then she must pay back all

the cash of the settlement — even though almost all has been paid to the solicitor. She is very, very depressed.

She said that the solicitor only wanted a cash settlement so he could get his hands on it. She failed to check the terms of settlement *before* she signed off on it. She only saw the cash and thought she would be getting it all. No — she had a win so the solicitor can claim his costs (and then some) and it comes out of her win.

My advice: write down what you want as a settlement before you start to negotiate. Then you can see what you are giving up to get that settlement. *And* read the settlement thoroughly.

Peter Bennett is president of Whistleblowers Australia.

Rugby league request

Whistleblowers Action Group press release, 16 May 2007

Queensland whistleblowers are asking the rugby league public and authorities to honour Barry Gomersall in the lead-up to the first Queensland scrum in next week's State of Origin game at Suncorp Stadium.

Barry's role as the referee in the first State of Origin game is well known. His approach to fighting on the field of play, whereby he left the fight to the players to resolve and allowed the game continue, made him famous in the sport.

Less well known are Barry's efforts to address the abuse of children in Queensland and his personal campaign to have justice authorities meet their responsibilities in investigating alleged rape and physical abuse of children in State care.

For his efforts in this regard, Barry was recently awarded, posthumously, the 2006 Whistleblower Supporter of the Year by the Whistleblowers Action Group. Of special note in the Award's citation was Barry's action in 2004 to petition the Queensland Parliament for a special prosecutor to investigate the alleged abuse and rape of children at the John Oxley Youth Detention Centre, and to investigate the destruc-

tion by government authorities of documentation on the events at that institution that were collected by Magistrate Heiner.

While footballers could look after themselves in a rugby league match, in Barry's view, and he could let the game continue, that was not the case for Barry when it came to the protection of children. Barry insisted on the justice authorities in Queensland doing their job, and bringing the offenders to account.

The matters in Barry's petition are still unfinished business in Queensland. This is because justice authorities have failed to apply the law, it is alleged, something that Barry's petition to the Queensland Parliament tried to change.

It has been said and written in international forums that the justice system in Queensland, over the Heiner/John Oxley affair, has had the integrity of a rugby league scrum. Whistleblowers ask the Queensland State of Origin team to provide a fair scrum at the first scrum feed that it receives at next Wednesday's game, as an honour to Barry, and as an example to the Crime and Misconduct Commission of the thorough, fair and proper processes that it should employ whenever children in care are raped or abused

Release approved by WAG President Gordon Harris.
Contact: Greg McMahon 0411 757231

Whistleblower awards

Press release, 23 April 2007

On behalf of the Whistleblowers Action Group (Queensland), I advise that the annual general meeting of the group selected Mr. Col Dillon as the 2006 Whistleblower of the Year. The other annual award, for Whistleblower Supporter of the Year, has been given posthumously to Mr. Barry 'the Grasshopper' Gomersall.

The award citations carried the following commendations from the group.

Col Dillon

The award has been given for the decisive leadership shown by Mr Dillon in his stringent criticism of the failures by the Queensland Government to provide a duty of care to Aboriginal peoples, particularly those who are held in lawful custody.

Further, the award has been given for Mr Dillon's determined efforts to ascertain the truth and full extent of the investigations that were supposedly carried out by the Crime and Misconduct Commission into the heinous crime of a pack rape committed on a female child whilst held in lawful custody at the John Oxley Youth Detention Centre.

Mr Dillon has criticised the various departments, who are bound by statutory requirements to provide a duty of care, for failing to observe the unambiguous requirements of the recommendations arising out of the Royal Commission into Aboriginal Deaths in Custody. Col Dillon felt morally obliged to resign from and sever his connections with the Queensland government over its continued interference with statutory departments, namely the Queensland Police Service, Crime and Misconduct Commission and the Office of the Director of Public Prosecutions, throughout the course of the investigations into the death in custody of Mulrunji Doomadgee at Palm Island.

Col Dillon was the first police officer at the Fitzgerald Commission of Inquiry to make a public interest disclosure on corruption within the Queensland Police Force.

Barry Gomersall

Barry 'the Grasshopper' Gomersall has been recognized for the open support he gave, while a public servant, to the calls for an inquiry into the destruction of evidence of child abuse at the John Oxley Youth Detention Centre. Barry's electronic petition to the state parliament over the destruction of the Heiner documents was a boost to efforts to have this injustice addressed. His request to meet and shake the hands of whistleblowers disclosing child abuse in public and church institutions will always be remembered by those whistleblowers under attack for their heroic disclosures. Barry's support has been a much appreciated

adjunct to the fund-raising support that he gave to Variety and other charities in their efforts to help children.

Barry's family has requested that the value of any presentation be donated as funds to Variety, respecting Barry's wishes for happier lives for disadvantaged children.

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

This is the fourteenth year that the group has made its awards to deserving persons. Previous recipients of the Whistleblower of the Year award have been as follows.

- Ms. Kerry Campbell (1993), whose disclosures of mistreatment of people in care at the Basil Stafford Centre led to the closure of the Centre

- Dr. Brian Senewiratne (1994), whose disclosures of conditions at the Princess Alexandra Hospital led to major refurbishment of that public health facility

- Mr. Jim Leggate (1997), whose disclosures about the non-enforcement of the environmental conditions of mining leases led to the transfer of regulatory functions from the Mines Department

- Mr. Oliver Clark (1998), whose disclosures about child abuse, and about the cover-up of the same, have led to the imprisonment of several religious clergy

- Rev Pat Comben (1999), who made disclosures to the Channel 9 *Sunday* program about the considerations of the Queensland cabinet prior to cabinet's decision to order the destruction of the papers of Mr. Heiner [the inquirer into mistreatment of children at the Queensland government's John Oxley Centre]. These disclosures were a major contribution to public knowledge about that issue

- An unknown whistleblower (2000), whose disclosures led to the investigation of Queensland's Equity Commissioner and Public Service Commissioner, which investigation preceded the resignation of the former and the demotion of the latter

- Mr. Darcy Hogan (2001), whose disclosures about the governance of

racing boards in Queensland led to inquiries into and reforms of the racing industry in this state

- A public officer who wishes to remain anonymous (2002), whose disclosures led to the replacement of the chief executive of a Queensland government administration

- Ms. Wendy Erglis (2003), whose disclosures foretold of the direct involvement of the Queensland parliament and its servants in the bullying of officers of Queensland Health

- Mr. Nathan Moore and Mr. Greg Maddock (2004), for the pain they experienced in living the harm brought to them through the victimisation practised by organisations

- Dr. Con Aroney and Nurse Toni Hoffman (2005), for the disclosures they made about deaths in the Queensland health system arising from a rogue bureaucracy and alleged criminal malpractice.

In 1996, the award of Whistleblower Supporter of the Year went to Mr Bruce Grundy, for disclosures made through the University of Queensland's *The Weekend Independent* newspaper, concerning the destruction of the Heiner papers by members of the government of the day. The award in 2002 went to Mrs Julie Gilbert, who brought to the attention of the public the state of politicisation of the Queensland Office of the Director of Public Prosecutions (and, subsequently, of the Queensland justice system). In 2003 the award went to radio announcer Mr. Alan Jones for highlighting nationally the politicisation and capture of Queensland's justice system as demonstrated by the imprisonment of Pauline Hansen. In 2004, the Hon Bronwyn Bishop MP received the award for the work of a federal parliamentary committee in exposing alleged criminal acts by the Queensland government over the destruction of the Heiner documents. The Bundaberg Hospital Patients Support Group received the award in 2005 for support to whistleblowers in Queensland Health.

Contact: Greg McMahon (Secretary), 0411 757 231; Phone/Fax 07 3378 0042

Whistleblowers Australia contacts

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

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

Victoria

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

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

Whistle

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2007 AGM and conference

The Whistleblowers Australia annual general meeting and conference this year will be on 24-25 November, at the Uniting Conference Centre, 3 Mason Drive, North Parramatta, just off Pennant Hills Road, about 45 minutes from downtown Sydney. The NSW Branch will give train and bus times with the formal announcement. The conference centre is managed by the Uniting Church, is modern, with all facilities, and has its own accommodation. The theme for the conference is tentatively “Whistleblowing in 2007: what lies ahead?”

Confirmed speakers include:

- Lee Rhiannon, leader of the NSW Greens
- Dominique Hogan-Doran, a Sydney barrister, speaking on in-house lawyers and private sector legislation (she handled the FAI and HIH inquiry)
- Peter Timmins on FOI
- Dr A J Brown, Griffith University, the academic leading a massive research project on whistleblowing.
- Barry O’Farrell, leader of the NSW Opposition

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