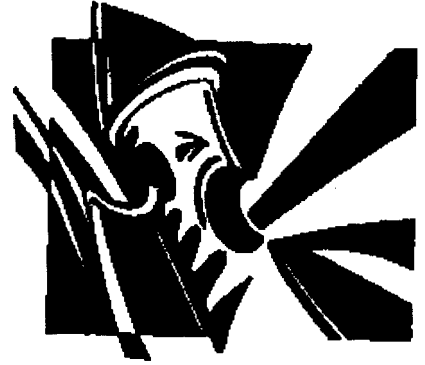


*"All that is needed for evil to prosper is for people of good will to do nothing"*—Edmund Burke

# *The*



# *Whistle*

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## Leakers



## WikiLeaks



### **Tell us secrets but only those in the public interest**

Leslie Cannold  
*Sun-Herald*, 5 December 2010,  
Extra p. 4

LAST week, WikiLeaks began releasing documents from a trove of more than 250,000 US diplomatic cables.

The results have been stories in news outlets around the world. Some are in the public interest, some just of interest to the public or what *The Guardian* columnist Simon Jenkins calls “high-grade gossip.”

Those that pass the public-interest test include revelations of tactical failures in the Afghan war that may have cost the lives of British soldiers and the Bush administration’s pressuring of Germany to not prosecute CIA officers who tortured a German national.

Among the tittle-tattle is the view of a US embassy staffer that French President Nicolas Sarkozy is “thin-skinned” with an “authoritarian personal style.”

News items still refer to WikiLeaks as a whistleblowing website but all references to whistleblowing — the act of informing on an individual’s or institution’s corrupt or illicit behaviour — seem to have been removed from the site.

Instead we learn that the organisation’s goal is simply “to bring important news and information to the public” through leaks.

We are told that “publishing improves transparency, and this transparency creates a better society for all people” and that WikiLeaks brings “truth to the world without fear or favour.”

In cringeworthy text accompanying the embassy cables, the US government is reminded of the lesson of George Washington, the country’s first president, who “could not tell a lie.” Media and governments aren’t lying when they fail to fling into the public domain every document they write, any more than you and I are being dishonest when we fail to speak every

thought aloud or decline to repeat the confidences of close friends to a football stadium of people.

There is a legitimate role for editorial judgment and a need to protect individual privacy in media and corporate dealings, not to mention sometimes a requirement for secrecy in military operations, intelligence gathering and diplomatic negotiations. The arbiter for disclosure is the public interest.



It is vital that WikiLeaks not become about leaking for leaking’s sake. It must not abandon its fight against corruption in defence of the public interest to favour what the Federation of American Scientists calls “an assault on secrecy.”

Instead, WikiLeaks must ensure it continues to grab headlines with the same stories that have won it awards from Amnesty and made its name. These include images of the Baghdad air strike and documents about extrajudicial killings and disappearances in Kenya. WikiLeaks is a game-changer, providing the raw data that can be used to shine light into the dark corners of

corrupt corporate and civil institutions. It can be expected to change the way governments and businesses operate. In the future, openness may be the default and arguments made about why something should stay secret. This profound and important paradigm shift is largely down to WikiLeaks.

This is why I hope the organisation will move to protect its own legacy, and the public support required for its continuing influence, by sticking to the task of whistleblowing, not just divulging secrets because they’re interesting or because it can.

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### **Live with the WikiLeakable world or shut down the net.**

**It’s your choice  
Western political elites  
obfuscate, lie and bluster —  
and when the veil of secrecy is lifted,  
they try to kill the messenger**

John Naughton  
*The Guardian*, 6 December 2010

“NEVER waste a good crisis” used to be the catchphrase of the Obama team in the run-up to the presidential election. In that spirit, let us see what we can learn from official reactions to the WikiLeaks revelations.

The most obvious lesson is that it represents the first really sustained confrontation between the established order and the culture of the internet. There have been skirmishes before, but this is the real thing.

And as the backlash unfolds — first with deniable attacks on internet service providers hosting WikiLeaks, later with companies like Amazon and eBay and PayPal suddenly “discovering” that their terms and conditions preclude them from offering services to WikiLeaks, and then with the US government attempting to intimidate Columbia students posting updates about WikiLeaks on Facebook — the intolerance of the old order is emerging from the rosy mist in which it has hitherto been obscured. The response has been vicious, co-ordinated and potentially comprehensive, and it

contains hard lessons for everyone who cares about democracy and about the future of the net.

There is a delicious irony in the fact that it is now the so-called liberal democracies that are clamouring to shut WikiLeaks down.

Consider, for instance, how the views of the US administration have changed in just a year. On 21 January, secretary of state Hillary Clinton made a landmark speech about internet freedom, in Washington DC, which many people welcomed and most interpreted as a rebuke to China for its alleged cyberattack on Google. "Information has never been so free," declared Clinton. "Even in authoritarian countries, information networks are helping people discover new facts and making governments more accountable."



US Secretary of State Hillary Clinton endorsed Internet freedom in a speech on 21 January 2010

She went on to relate how, during his visit to China in November 2009, Barack Obama had "defended the right of people to freely access information, and said that the more freely information flows the stronger societies become. He spoke about how access to information helps citizens to hold their governments accountable, generates new ideas, and encourages creativity." Given what we now know, that Clinton speech reads like a satirical masterpiece.

One thing that might explain the official hysteria about the revelations is the way they expose how political elites in western democracies have been deceiving their electorates.

The leaks make it abundantly clear not just that the US-Anglo-European adventure in Afghanistan is doomed but, more important, that the American, British and other Nato governments privately admit that too.

The problem is that they cannot face their electorates — who also happen to be the taxpayers funding this folly — and tell them this. The leaked dispatches from the US ambassador to Afghanistan provide vivid confirmation that the Karzai regime is as corrupt and incompetent as the South Vietnamese regime in Saigon was when the US was propping it up in the 1970s. And they also make it clear that the US is as much a captive of that regime as it was in Vietnam.

The WikiLeaks revelations expose the extent to which the US and its allies see no real prospect of turning Afghanistan into a viable state, let alone a functioning democracy. They show that there is no light at the end of this tunnel. But the political establishments in Washington, London and Brussels cannot bring themselves to admit this.

Afghanistan is, in that sense, a quagmire in the same way that Vietnam was. The only differences are that the war is now being fought by non-conscripted troops and we are not carpet-bombing civilians.

The attack of WikiLeaks also ought to be a wake-up call for anyone who has rosy fantasies about whose side cloud computing providers are on. These are firms like Google, Flickr, Facebook, Myspace and Amazon which host your blog or store your data on their servers somewhere on the internet, or which enable you to rent "virtual" computers — again located somewhere on the net. The terms and conditions under which they provide both "free" and paid-for services will always give them grounds for dropping your content if they deem it in their interests to do so. The moral is that you should not put your faith in cloud computing — one day it will rain on your parade.

Look at the case of Amazon, which dropped WikiLeaks from its Elastic Compute Cloud the moment the going got rough. It seems that Joe Lieberman, a US senator who suffers from a terminal case of hubris, harassed the company over the matter. Later Lieberman declared grandly that he would be "asking Amazon about the extent of its relationship with WikiLeaks and what it and other web service providers will do in the future to ensure that their services are not

used to distribute stolen, classified information." This led the *New Yorker's* Amy Davidson to ask whether "Lieberman feels that he, or any senator, can call in the company running the New Yorker's printing presses when we are preparing a story that includes leaked classified material, and tell it to stop us."



US Senator Joe Lieberman

What WikiLeaks is really exposing is the extent to which the western democratic system has been hollowed out. In the last decade its political elites have been shown to be incompetent (Ireland, the US and UK in not regulating banks); corrupt (all governments in relation to the arms trade); or recklessly militaristic (the US and UK in Iraq). And yet nowhere have they been called to account in any effective way. Instead they have obfuscated, lied or blustered their way through. And when, finally, the veil of secrecy is lifted, their reflex reaction is to kill the messenger.

As Simon Jenkins put it recently in the *Guardian*, "Disclosure is messy and tests moral and legal boundaries. It is often irresponsible and usually embarrassing. But it is all that is left when regulation does nothing, politicians are cowed, lawyers fall silent and audit is polluted. Accountability can only default to disclosure." What we are hearing from the enraged officialdom of our democracies is mostly the petulant screaming of emperors whose clothes have been shredded by the net.

Which brings us back to the larger significance of this controversy. The political elites of western democracies have discovered that the internet can be a thorn not just in the side of authoritarian regimes, but in their sides

too. It has been comical watching them and their agencies stomp about the net like maddened, half-blind giants trying to whack a mole. It has been deeply worrying to watch terrified internet companies — with the exception of Twitter, so far — bending to their will.

But politicians now face an agonising dilemma. The old, mole-whacking approach won't work. WikiLeaks does not depend only on web technology. Thousands of copies of those secret cables — and probably of much else besides — are out there, distributed by peer-to-peer technologies like BitTorrent. Our rulers have a choice to make: either they learn to live in a WikiLeakable world, with all that implies in terms of their future behaviour; or they shut down the internet. Over to them.

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## It's safer to Wiki than to whistle out loud

Brian Martin  
*Newcastle Herald*,  
10 December 2010, p. 9

WHAT to think about WikiLeaks? Many government leaders seem to hate it and public opinion is polarised.

To understand the WikiLeaks phenomenon, it's useful to look at leaking and whistleblowing more generally. Whistleblowers are people who speak out in the public interest, typically to expose corruption, abuse or hazards to the public. When management — public or private — is exposed for wrongdoing or poor performance, the reaction to whistleblowers is hostile.

Over the past 20 years, I've talked to hundreds of whistleblowers. Their stories are remarkably similar: they regularly encounter petty harassment, ostracism, reprimands, referrals to psychiatrists, demotion, punitive transfers and dismissal. It is hard to find stories of whistleblowers who were successful in stimulating needed change.

The sagas of whistleblowers are heartbreaking. Many of them naively believed that by providing information to managers or outside agencies, problems would be addressed. Their faith in the system is destroyed when, rather than their claims being investi-

gated, they themselves become the focus of attention.

When someone comes to me and says they are planning to blow the whistle, I say "Don't do it!" — and then provide information about necessary preparation to have even a small chance of success. There has to be a better way.

Rather than speaking out and suffering the consequences, it is often safer to be a leaker: to provide documents to a trusted source — often a journalist — and thus help expose a problem without as much risk to one's career. Many leakers are able to stay in their jobs and continue to expose problems.

Governments often pursue the sources of leaks with ferocity. Indeed, they often seem more concerned about the leaking than about the problems exposed.

The case of Allan Kessing is instructive. Kessing was alleged to have leaked a report on Australian airport security; he denies he did it.

After the report was leaked, the government spent \$200m on improving security but, rather than rewarding Kessing, charged him with a criminal offence. The message to other public servants was clear: don't dare leak anything, no matter how important to the public interest.

WikiLeaks, in one sense, is nothing new. It is just another means of getting information to the public that governments and others don't want people to know. However, there are some important differences.

WikiLeaks makes leaking much easier and safer. This is especially true in repressive regimes. Whistleblowers there are liable to end up in prison or dead, whereas leakers have a chance of survival.

Another difference is editorial control. Previously, journalists and editors in the press, radio and television were intermediaries between leakers and audiences. Now, WikiLeaks staff make the editorial decisions, though in some cases they also involve newspapers as well.

Editors have long been criticised for running stories about leaked documents. It takes courage and allies to stand up to secrecy-obsessed governments. Therefore it is no surprise that governments have

targeted WikiLeaks. Just as whistleblowers are denigrated and attacked, so Julian Assange and the WikiLeaks enterprise have become targets for reprisals. The usual technique is to attack the messenger. Assange, as the most visible figure, is a prime target for being discredited.

In the old days, the mass media were sometimes hesitant to run sensitive stories, so the running was taken by alternative media such as low-circulation magazines. Today, the Internet has made alternative publishing much easier. Whistleblowers can put up their own websites, and many do. Others prefer to keep a low profile but can provide information anonymously to any number of online outlets.

Governments imagine they can shut down WikiLeaks, but all that will happen is the arrival of alternative avenues for exposing information on the Internet. Be prepared for WikiLeaks versions 2, 3 and more.

WikiLeaks is a symptom of a change in the way information is handled in modern societies. It used to be that powerful groups could control who had access. Even the mass media could be cowed by threats of reprisals.

Digital technologies make it much easier to gain access to and disseminate information. Governments are using these technologies to gather information on citizens. However, citizens also are gaining increased capacity to collect and share information. This could be called the democratisation of information.

Governments have often justified surveillance of citizens with the misleading mantra "If you have nothing to hide, you have nothing to fear." The tables are now turned. Governments have plenty to hide and, with WikiLeaks and its successors, they also have plenty to fear.

[This is the text as submitted. The published version omits a few passages.]

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## A typical day for PFC Bradley Manning

Posted by Army Court-Martial  
Defense Specialist on the website *The  
Law Offices of David E. Coombs*,  
18 December 2010

PFC MANNING is currently being held in maximum custody. Since arriving at the Quantico Confinement Facility in July of 2010, he has been held under Prevention of Injury (POI) watch.

His cell is approximately six feet wide and twelve feet in length.

The cell has a bed, a drinking fountain, and a toilet.

The guards at the confinement facility are professional. At no time have they tried to bully, harass, or embarrass PFC Manning. Given the nature of their job, however, they do not engage in conversation with PFC Manning.

At 5:00 a.m. he is woken up (on weekends, he is allowed to sleep until 7:00 a.m.). Under the rules for the confinement facility, he is not allowed to sleep at anytime between 5:00 a.m. and 8:00 p.m. If he attempts to sleep during those hours, he will be made to sit up or stand by the guards.

He is allowed to watch television during the day. The television stations are limited to the basic local stations. His access to the television ranges from 1 to 3 hours on weekdays to 3 to 6 hours on weekends.

He cannot see other inmates from his cell. He can occasionally hear other inmates talk. Due to being a pretrial confinement facility, inmates rarely stay at the facility for any length of time. Currently, there are no other inmates near his cell.

From 7:00 p.m. to 9:20 p.m., he is given correspondence time. He is given access to a pen and paper. He is allowed to write letters to family, friends, and his attorneys.

Each night, during his correspondence time, he is allowed to take a 15 to 20 minute shower.

On weekends and holidays, he is allowed to have approved visitors see him from 12:00 to 3:00 p.m.

He is allowed to receive letters from those on his approved list and from his legal counsel. If he receives a letter from someone not on his approved list, he must sign a rejection

form. The letter is then either returned to the sender or destroyed.

He is allowed to have any combination of up to 15 books or magazines. He must request the book or magazine by name. Once the book or magazine has been reviewed by the literary board at the confinement facility, and approved, he is allowed to have someone on his approved list send it to him. The person sending the book or magazine to him must do so through a publisher or an approved distributor such as Amazon. They are not allowed to mail the book or magazine directly to PFC Manning.



US military leaker Bradley Manning

Due to being held on Prevention of Injury (POI) watch:

PFC Manning is held in his cell for approximately 23 hours a day.

The guards are required to check on PFC Manning every five minutes by asking him if he is okay. PFC Manning is required to respond in some affirmative manner. At night, if the guards cannot see PFC Manning clearly, because he has a blanket over his head or is curled up towards the wall, they will wake him in order to ensure he is okay.

He receives each of his meals in his cell.

He is not allowed to have a pillow or sheets. However, he is given access to two blankets and has recently been given a new mattress that has a built-in pillow.

He is not allowed to have any personal items in his cell.

He is only allowed to have one book or one magazine at any given time to read in his cell. The book or magazine is taken away from him at the end of the day before he goes to sleep.

He is prevented from exercising in his cell. If he attempts to do push-ups, sit-ups, or any other form of exercise he will be forced to stop.

He does receive one hour of “exercise” outside of his cell daily. He is taken to an empty room and only allowed to walk. PFC Manning normally just walks figure eights in the room for the entire hour. If he indicates that he no longer feels like walking, he is immediately returned to his cell.

When PFC Manning goes to sleep, he is required to strip down to his boxer shorts and surrender his clothing to the guards. His clothing is returned to him the next morning.

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## The lonely life of a whistleblower

James Adonis  
smh.com.au (online article),  
10 December 2010

NESTLED among the delicious exposé of secretive diplomacy, the WikiLeaks phenomenon has provided us with a glimpse of what life is like for a whistleblower. And it isn't friendly.

The brutal vilification and viciousness inflicted upon Julian Assange's quest for truth has displayed on a grand scale what employees experience when they reveal the unethical conduct in their organisation. The only difference? They don't have the infectious support of millions of people who rally in their defense.

“If there was greater transparency, we probably wouldn't need whistleblowers in the first place,” says Peter Bennett, the national convenor of the newly-formed Whistleblowers Information Centre and a former national president of Whistleblowers Australia. He's also an ex-whistleblower himself — twice — with the most recent case making its way to the High Court.

The Australian Customs Service employed Bennett for over three decades. For a while, he was also the

federal president of the Customs Officers Association, the industry trade union. On several occasions, Bennett made comments during radio interviews about customs issues, such as drug trafficking, border protection and staff cuts. These comments were made in his capacity as a senior union official. His employer disagreed, imposed tough disciplinary action in the form of a salary penalty and reassigned duties. And so the fight was on. Eventually, the courts found in his favour.



Peter Bennett

He's part of a minority within a minority. Most people who think about blowing the whistle change their mind very quickly because they're afraid of the consequences. A big contributor to this fear is a lack of anonymity. An analysis by the Association of Certified Fraud Examiners earlier this year found that only about a quarter of companies in Australasia had hotlines where employees could voice their concerns confidentially. This is despite hotlines being regarded by the researchers as the most effective means of controlling fraud.

The same study found that of all the measures available to employers to deal with misconduct, the one they adopt the least frequently is the paying of rewards to whistleblowers. Companies in our region lag behind the rest of the world — even Africa. So, with little incentive and even less protection, it's no surprise people chicken out.

As Peter Bennett tells me, "The easiest way to fix the problem is not to

fix what has been discovered but to get rid of the whistleblower."

And that's what they do. "One of the tactics used by employers is they try to discredit them, so they send them off for medical assessments to see if they're crazy, they isolate them, they send them off to do other jobs, they penalise them, they change their shifts, and they put them into a bad work situation," he says. "Everyone else sees what's happened to the whistleblower, and they say 'woops, I don't want that to happen to me', so they shut their mouths and the misconduct that was going on just becomes part of the culture of the organisation."

A report released by the federal government last year following an inquiry into whistleblower protection outlined the tensions these employees are forced to face. They're divided between loyalty to their employer and loyalty to their personal values. They're torn between concern for their reputation and concern for their career and family. "Yet all too often whistleblowers are left frustrated, humiliated or ostracised at great personal cost," write the authors.

One saving grace is the Corporations Act, which makes the victimisation of whistleblowers a crime. For example, if an employee makes a disclosure to someone, there's a legal duty to keep confidential the information the employee provides, including his or her identity. Even if the employee is breaching a confidentiality clause by speaking up, there are protections in the Act preventing the termination of that person's employment. There are, of course, many ifs and buts, but at least it's some level of protection.

So, what should an employer do if they have a whistleblower in the team? According to Bennett, they must "throw open their books and do a mea culpa. Address it as openly as you can and minimise the harm to the organisation. That's the ethical thing to do."

In the meantime, he emphatically believes whistleblowers are the "cheapest and easiest way of monitoring and auditing an organisation. Every single time a person goes to work, they are in a position to disclose wrongdoing." And when they do disclose that wrongdoing: "Nothing should happen to them, other than a pat on the

back and a thank-you-very-much. You've solved a problem."

In reality, though, there are thousands of mini Julian Assanges in workplaces everywhere seeing the treatment dished out to a world-famous man despite the money and influence backing him. In their own small world, it must be lonely.

## Blowing the whistle into an empty room

Robina Cosser

*On Line Opinion*, 14 December 2010

So ...

You become aware that something is "going on" in The Department. And you decide that you must do something about the situation. You decide that you must "blow the whistle" — you must tell somebody who will do something about the situation.

So you struggle over the wording of your disclosure for several days, or even weeks, trying to explain your disclosure as clearly as possible. And you collect lots and lots of supporting documentation.

Then you mail your disclosure and the supporting documentation to a person that you think cannot possibly be corrupt. The Director-General of The Department, maybe.

But you don't realise that you are doing battle with the public service. And that no public servant in The Department wants to be held responsible for hearing you blow the whistle. And that The Department's public servants have generations of experience in "not hearing," "not understanding," "not knowing" and "not finding any evidence of."

And so your disclosure is "lost." Or the supporting documents are "lost." Or your disclosure is reduced to gibberish — the cover letter and the first page of your disclosure are saved, the next eight pages are "lost" and the remaining pages of your disclosure are sent to another office, in another city, and jumbled up with lots of other documents.

Or every alternate page of your disclosure is "lost." Or two pages of your disclosure are recorded, two are "lost," two are recorded, two are "lost," etc. Or your disclosure is

reduced to half-size and turned around and printed sideways on the page, so that it is very difficult to read.

And The Department do nothing about your disclosure.

So, after waiting for some time, you decide that you have to make your disclosure to another government department, one that is not corrupt. The Crime and Misconduct Commission, maybe.

So you ring the CMC. And you make your disclosure very, very clearly to the CMC officer.

And the CMC officer writes down her own gibberish version of your disclosure. And she makes a note that, having spoken with you, she has doubts about your credibility. And she puts these notes on your file.

You have a suspicion that the CMC officer was reluctant to record your disclosure. Something in her tone of voice. And so you send her an email, making your disclosure very, very clear to her. So that she cannot pretend to misunderstand.

But the CMC officer does not open your email. She simply records that you have sent her yet another pesky email. And the CMC officer “devolves” your disclosure — she sends it back to The Department, The department that you are complaining about.

And so the CMC have no record of your disclosure, just a record of their own gibberish version of your disclosure. And The Department’s investigation into your disclosure is based on the gibberish version of your disclosure.

And The Department’s investigation is not really an investigation; it is a “review.” And the rules of the “review” are that you are not allowed to speak to the reviewer. And the reviewer is not allowed to ask any questions. So you have no way of finding out that your disclosure has been reduced to gibberish.

A few days before or after the “review” begins, Freedom of Information documents are released to you by The Department. And you realise that your official records have been extensively falsified. So you email the Director-General. And you tell him that your official records have been extensively falsified.

He emails back.

Lots of times.

With lots of promises and reassurances.

And you email the Director of Ethical Conduct. You tell him that your official records have been extensively falsified. And he emails back. Lots of times. With lots of promises and reassurances.

Then, a few days before a copy of the review is released to you under “Freedom of Information,” the CMC and The Department each “accept” the review — the review based on the gibberish version of your disclosure and the falsified records — and they each declare your case “closed.”

So that when you write and protest that the review has been based on a gibberish version of your disclosure and on a huge mass of falsified “official records,” no public servant reads your letters. No public servant “knows.” Because your case has been declared “closed.”



And when you ask, under freedom of Information, what the Director-General and the Director of Ethical Conduct actually did in response to your emails, you are advised that there was a computer problem in The Department. And all of your emails to and from the Director-General and the Director of Human Resources over several months were “lost.” And so there is no official record of your complaint to them that your “official records” have been extensively falsified. And there is no official record of any of their promises and the re-assurances.

So you decide to phone another government department, one that is not corrupt. And you explain your disclosure again, very clearly. You notice a slight whining noise as you are

speaking. When you have finished making your disclosure the Public Servant asks you if, “besides that,” anything else is bothering you. And so you struggle to give him some other examples of corruption. And you notice that the whining noise has now stopped. And later you wonder if the Public Servant could have been pausing his tape recorder while you were explaining your disclosure.

So you visit the Head Office of The Department. And you take your own tape recorder. And you place it on the table.

And the Head Office Public Servant places his own tape recorder on the table, beside yours. And, while you are speaking about a particular group of the falsified records, the Head Office Public Servant fiddles anxiously with his tape recorder. Twice. And, later, when you listen to your own recording, you notice that there is a loud straining noise on your own tape while you were explaining that a witness has told you that this particular group of “official records” are entirely falsified.

And you wonder if the Head Office Public Servant could have paused his tape recorder while you were talking about these particular “official records.”

The Department eventually appoint an “independent investigator.”

And the Head Office Public Servant whose behaviour you have complained about to the CMC is given control of the “independent investigation.” The Head Office Public Servant tells the “independent investigator” that he is only allowed to “consider” the falsified documents that you have discovered on your official records. He is not allowed to consider your evidence that these “records” are extensively falsified. Nor is he allowed to consider the many “official records” that are still being refused to you under Freedom of Information.

He is only allowed to “consider” the falsified documents.

Again.

And, one year before the CMC receive a copy of the “external investigation” report, they declare your case “closed.”

And two years before fragments of the “external investigation” report are released to you under Freedom of



Information, The Department “accept” the investigation report and write to you, declaring your case “closed.”

And, when you receive fragments of the Investigation Report under Freedom of Information, you realise that your disclosure has still not been investigated. And, when you write more protest letters, no public servant reads your protest letters because your case has been declared “closed.”

Again.

So you decide that you have to send your disclosure to somebody that you think really cannot be corrupt. The State Premier, maybe.

And the Premier’s office do nothing. For months.

And so you write again. Did they receive your disclosure?

And again the Premier’s office do nothing. For months.

And so you write again.

You give more information. But you do not repeat your disclosure — because you have already “disclosed” to them twice. And this third letter triggers a response. A “Briefing Note for the Premier” is prepared by a senior public servant.

The Premier is advised that you keep on writing pesky letters. But no mention is made of the disclosure in your first two letters. And the Premier is advised not to reply to your pesky letters.

And the Premier agrees not to reply to your letters. He signs the “Briefing Note” with a big, swirly signature. And all of his senior public servants also agree not to respond to your pesky letters.

And so all of your letters to the Premier from that date onwards are simply filed by a machine, without being read.

And no public servant “knows.”

And eventually you realise that you are whistling into an empty room.

Robina Cosser edits the Teachers Are Blowing Their Whistles and Whistle-blowing Women. She is Schools Contact Person and a Vice-President of Whistleblowers Australia.

## Journalists deserve to be given a shield in their battle to reveal truth

Paul Williams

*The Courier-Mail,*

16 November 2010, p. 26

DOES the Australian public trust journalists? Do the courts?

Not according to public opinion polls, or the precedent set by some courts of law that demand journalists reveal the names of confidential sources or risk jail or heavy fines.

A 2009 Roy Morgan poll found journalists were the third least-trusted among a list of 30 professions.

Where nurses, pharmacists and medical doctors consistently come in the top three, only advertisers and car salespeople rank lower than the news media.

But the public and courts should trust journalists and have faith in their commitment to professional ethics.

I can anticipate the online comments now, along the lines of: “Journalists are just ambulance-chasers whose desire for sensationalism and self-promotion never let the facts get in the way of a good story.” Excuse me while I yawn, but such tired abuse ignores reality.

Journalists are bound — if not by law then by the promise of their peers’ condemnation — by the Media Entertainment and Arts Alliance Code of Ethics.

The MEAA’s critical Clause Three insists, for example, that “where a source seeks anonymity, do not agree without first considering the source’s motives ... Where confidences are accepted, respect them in all circumstances.”

We should also trust professional news-gatherers for their public watchdog role. After the police, the fourth estate is society’s largest investigative body, responsible for cracking not only common crime but also deep political corruption.

Indeed, it was left to this newspaper and ABC TV’s Four Corners to gather enough evidence to prompt a royal commission into corruption in Queensland in the late 1980s.

A lack of trust in journalists can therefore be interpreted as a lack of

faith in a free media and in free speech itself.

How many whistle-blowers with potentially explosive information have shied away from contacting the media in the fear that, should the journalist buckle under court order, they too might face jail?

Put simply, a muzzled news media creates a muzzled society and a much poorer democracy. Just ask the newly released Burmese dissident Aung San Suu Kyi.

For 200 years, no Australian journalist was punished for disobeying a court order — technically “disobedience contempt” — to disclose the source of confidential information.

Yet, since the 1990s, a number of journalists have been penalised.

One celebrated case is that of *Herald Sun* journalists Michael Harvey and Gerard McManus, each fined \$7000 for refusing to identify the leaker of information — who also faced jail if revealed — regarding a 2004 federal government plan to reject an increase in war veterans’ pensions.

But after years of ignored demands, journalists are about to receive legal protection.

A couple of weeks ago, Independent MP Andrew Wilkie’s private member’s Bill, outlining so-called “shield laws”, passed the House of Representatives with unanimous support — the first to do so since 1999.

It’s likely to pass the Senate just as easily. If nothing else, it seems the “new paradigm” of the hung Parliament does occasionally work.

Importantly, the Evidence Amendment (Journalists’ Privilege) Bill will legally recognise the journalist-source relationship as similar to that of the doctor-patient or lawyer-client. It seems certain confidences must be respected, even in the courts.

Reassuringly for the nay-sayers, shield laws are not a blank cheque for journalists.

There will still be a public interest test — as there is in defamation claims — and in the most sensitive cases, such as national security, the judiciary can still exercise a loop-hole.

Australians rely on their news and want no gilding of lilies. This was clearly demonstrated during the 2010 federal election, when the issue of



leaks undoubtedly changed the course of the campaign.

Readers will remember journalist Laurie Oakes revealed allegations that Julia Gillard, as Kevin Rudd's deputy, opposed paid parental leave and hefty pension increases.



Laurie Oakes

There's little doubt Oakes had a duty to report it and the public a need to hear it. But in what state would political reporting now find itself had Oakes been hauled before the courts and, on pain of jail, been forced to reveal his source?

Dr Paul Williams is a senior lecturer in journalism at Griffith University's Gold Coast campus.

## Why do we hang whistleblowers out to dry?

Doing the right thing in this country just seems to get you nowhere, writes

**Daniel McConnell**

Independent.ie, 31 October 2010

IRELAND has a woefully poor record of protecting and rewarding whistleblowers, much to our cost.

Many of the great scandals in recent Irish history — like the Dirt inquiry in AIB [a banking group] — only came to light as a result of the actions of brave people, willing to risk their livelihoods and financial security to bring corruption, malpractice or incompetence to light.

We journalists know, appreciate and cherish the courage and gallantry of whistleblowers.

These are people who risk it all to tell the truth, to stand up to their bosses, to be honest brokers in a country where such honesty is

punished, not rewarded, time and time again.

Legislation has been long promised on protecting those who raise their heads and speak out, but as of yet, there is no sign of it.

"The Government has refused to give the necessary protection to whistleblowers in the banking sector. The proposed legislation would not have protected Ireland's two noblest whistleblowers, Eugene McErlean and Tony Spollen, who both blew the whistle on AIB," said my colleague Senator Shane Ross, who has worked tirelessly to highlight their efforts.

Their efforts were crucial in revealing one of the great swindles of all time by Irish banks.

But now we have the latest case involving the troubled Irish Red Cross. In recent months, the once venerable charity has been dogged by a series of controversies and scandals.

Its head of international development, Noel Wardick, was suspended from his position after he revealed himself as the author of a blog which highlighted serious instances of poor governance and financial irregularities at the charity.

In the middle of this extraordinary affair is €162,000 of donations which lay idle in a Tipperary bank account for three years.

An inquiry by independent accountants was launched by the IRC, only to be quickly abandoned on the basis of cost and replaced with an internal probe which has been criticised in the Dail as being simply not credible.

A truly transparent and independent inquiry into the allegations and the mysterious case of the Tipperary bank account is the only way the IRC can ensure that its excellent reputation can be restored.

For bringing all this to light and asking that things change, Mr Wardick is now facing the sack on the grounds of gross misconduct, confirmation of which is due any day now.

It's a bloody disgrace.

Mr Wardick, like Mr Spollen and Mr McErlean, should be commended for his dedication to upholding decent standards in the face of grubby cronyism. He should be protected by law and he should be recognised as one of the good guys. He told the truth, he

bravely spoke out against incompetence and corruption.



Eugene McErlean

But what has happened is that large amounts of money are being used to wage war against Mr Wardick. To discredit him. Rather than listen to what he is saying or fix it, those in charge of the IRC waste thousands of euros in pursuing him.

And all the while, Defence Minister Tony Killeen refuses to intervene, despite almost €1m of taxpayers' money being handed over every year and the fact that he appoints the chairman.

If Mr Wardick is sacked, it will represent the gravest of injustices and send a powerful message that incompetence, negligence and cronyism are acceptable and that doing the right thing will get you nowhere.

It has been eight years since legislation was first promised, but as of yet to no avail.

Fine Gael's Brian Hayes said that Mr Wardick deserves to be protected not sacked. "The case of Noel Wardick and the Irish Red Cross highlights the urgent need to protect whistleblowers. It's now over eight years since the Government first promised legislation in this area."

He added: "The fact the Fianna Fail has not produced legislation and have voted down a Private Member's Bill from the opposition clearly demonstrates that the Government doesn't want people to speak out and doesn't want to protect those public servants who want to shine a light on malpractice and waste."

And the legislation that has been promised stops well short of offering any real protection to those who speak out.

"Whistleblowing laws that are introduced which fail to cover the most important cases, mean the Minister for

Justice is simply indulging in publicity stunts,” Mr Ross said.

It’s time Ireland came out of the dark ages — it’s time we not only protect whistleblowers, but cherish them.

Mr Wardick, like Mr Spollen and Mr McErlean before him, has genuinely done this state some service, and for that they deserve our support and our thanks.

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## Whistleblowers still wait for accountability to mean something

Allan Cutler

*Ottawa Citizen*, 10 December 2010

WHEN the auditor general issued her findings on Thursday after investigating Christiane Ouimet, those of us who were aware of the former Public Service Integrity Commissioner’s failure to protect whistleblowers were only surprised by the extent of her lack of integrity. The AG said bluntly that “the commissioner’s behaviour and actions do not pass the test of public scrutiny and are inappropriate and unacceptable for a public servant.”

However, our concern is not limited to how the former commissioner failed, but more importantly, how the government and Parliament failed in their oversight of an organization mandated with much needed action on safeguarding public integrity.

The AG’s report on Ouimet’s treatment of the commission’s employees read like a typical case of reprisal that whistleblowers are subjected to on a regular basis for simply doing their jobs. For example, the AG pointed out that Ouimet removed employees from the decision-making process and communication network, illegally disclosed personal information and reached to another department in order to punish the employee. This was done while PSIC was refusing to protect whistleblowers.

Similar whistleblower cases we have followed quickly come to mind. Veterans Affairs passed whistleblower and veterans’ advocate Sean Bruyey’s personal files to hundreds of people. Transport Canada’s reprisal against Ian Bron, who reported on public safety

threats, followed him to his new position at Public Works. Similarly, whistleblowers who have come to Canadians for Accountability have shared with us stories of being isolated, demoted or even forced out of employment after reporting on the wrongdoings of their managers.

The irony that the integrity commissioner displayed no integrity was never lost on those of us who have been following Ouimet’s dismal performance for the past three years. We have consistently and publicly criticized her failure to protect whistleblowers. On many occasions we also reached out directly to her office to offer recommendations for change. In fact, on a very telling and perhaps prophetic occasion, when Canadians for Accountability, after repeated requests from us, was allowed to make a presentation to the commissioner’s office on whistle-blowing, the only person absent from the meeting was the commissioner herself.

As whistleblowers who fight an uphill battle for real action for accountability, our disappointment lies not only in the failings and lack of integrity of the commissioner. What saddens us more is the fact that the government and politicians from all parties sat idly by as the commissioner’s office issued three annual reports which amounted to nothing but platitudes.

With an annual budget of \$6.5 million and more than 20 full-time staff, PSIC received 208 inquiries in 2009–10 but did not uncover a single case of wrongdoing. Out of the 50 cases closed, the office uncovered no valid whistleblowers. In answer to complaints about the lack of results, the PSIC made revealing excuses:

“We are not a representative of nor advocate for any individual; rather, we are an advocate for the public interest” and for “maintaining confidence in public institutions,” it asserted. This alone was a betrayal of public integrity and of whistleblowers.

Such reports should have set off alarms among all political parties who voted unanimously for the Accountability Act because it promised minimal yet imperative protection of whistleblowers. However, our repeated appeals through correspondence, or by

public opinion letters, have consistently fallen on deaf ears.



Christiane Ouimet

Photograph by Chris Wattie, Reuters

Prior to the AG’s investigation, the commissioner’s staff approached Canadians for Accountability to report that the outcome of cases brought forward by whistleblowers were being deemed unsubstantiated before any investigation took place. They also spoke of an autocratic and ineffective management “style,” and of massive staff turnover. If the employees of the integrity commissioner’s office could not protect themselves, how could they possibly protect whistleblowers?

The AG’s report should serve not only as an indictment of Ouimet’s abysmal failure but also, perhaps more importantly a wake-up call for the government and Parliament.

To begin with, the new commissioner must be selected using a more transparent process, be required to have a more appropriate background for the job, be a person of integrity and have a strong belief and commitment to public integrity and the protection of whistleblowers. Such an individual should not be from the existing cadre of senior bureaucrats, for as we have now seen, their loyalties are often not directed to the people they should be protecting — whistleblowers and the public — but rather to their colleagues and themselves.

Secondly, changes must be made to the Public Servants Protected Disclosure Act to eliminate loopholes, expand the mandate of the commissioner, increase compensation for whistleblowers and penalties for those making reprisals, and allow for more proactive investigations.

Without these changes, more whistleblower lives will be ruined and it will only be a matter of time before the next scandal surfaces. And how can Canadians continue to have confidence

in public institutions when the very organization mandated to protect whistleblowers refuses to back them or investigate the reported wrongdoing? When it is itself being condemned by the auditor general?

If the government is sincere about accountability and transparency, then it must pursue real action and real results, not endless meetings and information sessions. Whistleblowers deserve a commissioner with integrity who delivers real protection. Until then, accountability will remain an empty word and the Public Sector Integrity Commission will remain yet another colossal waste of public resources.

Allan Cutler is a former public servant and whistleblower who helped expose the federal sponsorship scandal. He is president of Canadians for Accountability.

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## Whistleblower wins record £61m payout

Simon Goodley

*The Guardian*, 28 October 2010, p. 3

A FORMER quality control manager at GlaxoSmithKline (GSK) has received £61m, believed to be the largest ever reward for a whistleblower, after exposing a series of contamination problems at a drugs factory in Puerto Rico, and a subsequent cover-up by company bosses.

Cheryl Eckard, 51, will pocket the \$96m share of a \$750m criminal and civil settlement between US regulators and the British pharmaceuticals group. The case showed that the company repeatedly ignored serious failings, including allegations that staff were “skimming” drugs to sell them on the Latin American black market and that its factory had mixed drug types and doses in the same bottle.

Eckard first warned of the numerous violations after being sent by GSK to investigate problems in the group’s huge factory in Cidra, Puerto Rico, in July 2002, following a warning letter to the company from US health officials.

Over the next 10 months, she repeatedly alerted a string of GSK executives to a catalogue of breaches,

only to be blocked and eventually sacked in 2003. In July of that year, Eckard phoned JP Garnier, the then chief executive, who declined to take the call to speak to her about the findings and the cover-up. Eckard, who is from North Carolina and is married with children, now works as a freelance consultant for the pharmaceutical industry.

Legal papers show that GSK employees in Cidra lied to US Food and Drug Administration (FDA) inspectors and that Eckard believes the company’s executives refused to acknowledge the gravity of the violations and act, because the FDA would not consider approvals for two new treatments until the issues in the warning letter had been resolved. The two products — the diabetes treatment, Avandamet, and Factive, which is used for chest infections — were subsequently approved by the regulator.

Court documents show how Eckard was gradually sidelined, despite increasing complaints to a growing number of senior bosses.

After receiving an initial presentation in July 2002 on the plant’s problems from Gloria Martinez, the quality assurance manager at Cidra, Eckard “immediately phoned [vice president for quality, Steve] Plating at GSK’s headquarters [and] recommended that GSK stop shipping all product from the Cidra plant, stop manufacturing product for two weeks in order to investigate and resolve the issues raised and the impact on released batches, and notify the FDA about the product mix-ups.”

Eckard also alerted Janice Whittaker, senior vice president for global quality, and, subsequently, David Pulman, then vice president of manufacturing and supply for North America.

After 10 weeks investigating the plant up to August 2002, Eckard — who had no authority to recall products, suspend manufacturing or report concerns to the FDA — returned to her base in North Carolina, but was sent back to Puerto Rico three weeks later to work on a “longer-term correction” of the plant’s compliance problems. However, Plating put Adalberto Ramirez, Cidra’s director of laboratories, in day-to-day control of the project with Eckard only given “an

‘oversight’ role.” She subsequently learned “that Ramirez had repeatedly lied to her about the status of work” and that the “compliance action teams” had been disbanded immediately after the FDA’s October re-inspection.

That deception was also reported to Plating and to Eckard’s immediate boss, Diane Seigny. Eckard said “that she would not participate in a cover-up ... and would not take part in any further meetings with the FDA about the Cidra plant.” The testimony continues: “During this period and thereafter, Eckard and Seigny were in frequent and increasing conflict about GSK’s management of the quality and compliance problems at Cidra.”

The court papers also reveal how GSK employed a private investigator, who identified connections between an unnamed senior manager at Cidra and companies alleged to be distributing GSK’s drugs on the black market.

By then, Eckard had been sidelined and in May 2003 she was made redundant at a meeting, during which she had her security badge confiscated and was escorted from the premises.

After being ignored by Garnier and passed to other departments, she then reported the company to the FDA in August 2003. In October, after another conversation with GSK’s compliance department, the whistleblower told the regulator that the company had no intention of acting on her report, and three weeks later it was forced to announce that the FDA had begun its own investigation.



Cheryl Eckard, centre, with her lawyers outside the US federal courthouse in Boston. Photograph: New York Times/Redux/eyevine

Eckard’s lawsuit was filed under the False Claims Act, which is designed to allow private citizens with knowledge of fraud on the government to sue and share in the proceeds of the recovery.

In a statement, the drugs group said: “We regret that we operated the



Cidra facility in a manner that was inconsistent with current good manufacturing practice. GSK worked hard to resolve fully the manufacturing issues at the Cidra facility prior to its closure in 2009.”

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#### FILM REVIEW

### Fair game

Reviewed by Mali Elfman  
screenrave.com  
4 November 2010

EVERY once in a while a film comes along that changes the way that you look at your current life, the way you look at politics and makes you question all the information being thrown at you. Director Doug Liman brings us quite possibly the most important film you can see this year, *Fair Game* starring Naomi Watts and Sean Penn.

Find out why you can't miss this film below ...

#### Players

- Director: Doug Liman
- Writers: Jez Butterworth and John-Henry Butterworth (screenplay), based on the books *The Politics of Truth* by Joseph Wilson and *Fair Game* by Valerie Plame
- Actors: Naomi Watts (Valerie Plame), Sean Penn (Joseph Wilson), Ty Burrell, Sam Shepard, Bruce McGill, Noah Emmerich
- Original Music by: John Powell
- Cinematography by: Doug Liman



Sean Penn, left, as whistleblower Joe Wilson

#### The Plot

CIA Agent Plame did everything she could to support her government, in fact she proved that there was a 97% chance that there would be no WMDs if we went to war. Unfortunately the

government was only interested in promoting that 3% and force a country into war. Her status as a CIA agent was revealed by White House officials allegedly to discredit her husband after he wrote a 2003 *New York Times* op-ed [opinion] piece. After being torn apart by the media, finally Plame and her husband have a chance to fight back.

#### The Film Good

- The Acting: This goes for everyone in the cast from Watts and Penn to the supporting cast that was on screen for two minutes. Great performances all around.
- The Iconic Swap: It was interesting to see Watts taking the lead and Penn dropping back to a co-star. In many ways Watts played the role of the iconic male lead; she's out at all hours, brings home the money and is seemingly unaware of her spouses emotions at times. Penn is the emotive character, the one who supports the lead unconditionally, the one who waits for the other one to make a move, and brings out the heart of the story. Both put in great performances, Watts proves that she is more than capable to lead the way and when you see Penn break down and cry you see why he wins all those statues.

#### The Political Good

- Penn: All billing aside, it is quite obvious why Penn took the role, aside from *Milk* this is quite possibly one of the most important roles he's ever done. This is a more than just a film but a commentary on our current political situation. Aside from nailing the intricacies of the performance, which bring the whole film alive, this is a film with a purpose. While Watts character is being attacked it's his response that the "average" person can relate to and it's his story that makes the film so real.
- Media Spin: We all know (or should know) that the media spins facts and you can never believe what you're told on TV, *but* it's fascinating to watch exactly how and why that's done. In this film you get to be on the inside of the story and watch reality being twisted all around you. And as an added bonus, they threw in a great scene that shows us why the press should be hit sometimes when they attack those that are in the limelight.



The real-life Valerie Plame, left, with Naomi Watts, who portrays Plame in *Fair Game*

- Political Success: It's hard to make a political film that deals with current events that is also interesting, poignant, entertaining and not completely self-indulgent — this film accomplishes all of that. It's like a successful *W* [a film about George W. Bush]. From showing us how the media manipulates stories, to how the government uses people to get what it wants, to investing us in the personal relationship between two characters, to making a stand on what's right and what's wrong, and why it's important to fight — this film has it all wrapped up in one.
- Speed: When you think back to past political cover-ups or wars, it took people decades to put all the facts together on any one situation. We already have a film with mainstream actors that will be released to mass audiences that documents events taking place in 2001–2002. The world isn't perfect, but with the speed that people are now able to look at situations and know the truth about them is impressive and this film really sets a new bar for showing the truth as it's going on and doing it well.

#### The Bad

- Nothing here!

#### Overall

It's rare that you get a fun film that also makes such an important point — and as quickly as this. Bush has only been out of office for less than two years and already we have a film documenting what went out inside the CIA and the White House post 9/11 and before we went into Iraq. It's a great film and definitely worth seeing! Rating: 9.3/10



### BOOK REVIEW

## Blowing the whistle on the world's largest financial fraud

Harry Markopolos  
with Frank Casey, Neil Chelo, Gaytri  
Kachroo and Michael Ocrant

*No one would listen:  
a true financial thriller*  
(John Wiley & Sons, 2010)

Reviewed by Brian Martin

Harry Markopolos was a US financial analyst. His job involved assessing and developing investment products, namely complicated packages of investments, for his employers. Markopolos knew his stuff, so when he came across Bernie Madoff's operation, he was immediately sceptical, even though Madoff was a towering figure in US financial circles and was widely respected.



Bernie Madoff

Madoff was offering investors an unequalled deal. They would give him their money to invest and he would deliver returns averaging 1% per month — 12% per annum — month after month, with negative returns few and far between. This was too good to be true.

Markopolos knew Madoff's returns were impossible to achieve legitimately. Either Madoff was using inside knowledge of the market to make money from trades or he was

running a Ponzi scheme. Markopolos thought it was a Ponzi scheme — and a big one, too. Madoff's operation was larger than any other in the market.

Ponzi schemes are named after Charles Ponzi, who ran an early pyramid operation. He solicited money from investors and paid them good returns. But actually Ponzi didn't make any investments — he just had the money from investors. To pay them a return, he had to obtain more money, so he continually needed new investors. There was always more money coming in to cover the payments to current investors. These schemes always go bust eventually, leaving a lot of unhappy investors, especially the ones who joined later.

Markopolos started gathering information about Madoff's operation and came across numerous suspicious signs. For example, if Madoff was making investments involving billions of dollars, there would be ripples in the prices of shares in the market — but somehow Madoff seemed to guess exactly where the market was going, month after month, through boom and bust, and never leave a trace of his activity. Markopolos thought, correctly, Madoff wasn't trading at all.

Markopolos wasn't alone. He worked with a small team of trusted analysts who shared his concerns. Each of them had jobs, eventually in different parts of the US. In the course of their jobs, each of them would casually ask people about Madoff, gradually collecting more information, which they shared with each other by email and telephone.

One of the lessons from this saga is that if a fraud is big enough, lots of people will know about it but few will be willing to do anything. Madoff's fraudulent Ponzi operation started in the 1990s. Madoff's returns were impossibly large, so something was fishy. But investors were hooked. They wanted those wonderful returns and so they queued up to give their money to Madoff. They didn't want to make any noise about their suspicions. They rationalised their inaction by assuming that Madoff was using inside knowledge to beat the market. Those investors who were wary wouldn't put any

money with Madoff, but they did nothing to expose him.

Why did Markopolos care about Madoff? One reason is that he had been brought up to support the good guys and act against crooks, even if there was nothing in it for him personally. Secondly, his employer was pressuring him to develop a financial product that would compete with Madoff's returns. Markopolos wanted to expose Madoff to get rid of this unrealistic demand.

If investors weren't going to do anything about Madoff, what next? Why not try the regulators? Markopolos prepared a submission to the Securities and Exchange Commission (SEC), whose official purpose was to regulate US financial markets.

Over a period of years starting in 2000, Markopolos made five separate disclosures to the SEC. What did the SEC do? Usually nothing. Markopolos' submissions were dismissed without serious examination. This made Markopolos increasingly angry.

Markopolos expected that the SEC would set up an investigation, and he made it easy for them. All they had to do was ask Madoff a few informed questions or collect a few key bits of information and his whole operation would be exposed. It would only take a few hours. It was that easy. Why didn't the SEC act? If it had, it would have been hailed for bringing down a huge fraud.

There were two main factors. The first is that most of the staff in the SEC were incompetent. They simply didn't know enough about what was going on in the financial scene to understand Markopolos' analysis, nor have enough experience in doing investigations to know how to proceed. The second factor was that the SEC was a paper tiger. It went after small-time fraud but would not act against big-time corruption involving billions of dollars. In essence, the SEC protected major fraudsters from honest investors. In Markopolos' words, "the SEC was an out-of-control agency that served no obvious purpose other than to fool people into believing it was actually offering investors protection."

Markopolos kept making submissions to the SEC because there were some solid employees there who supported him. But they were unable to get their superiors to act.

Through the years 2000 to 2008, Markopolos and his team continued to collect information about Madoff and his operation, which became bigger every year. By 2008, something like \$65 billion dollars was involved — and there were no actual investments, just money going in and out.

Markopolos also tried the media. One member of his team, Mike Ocrant, was a financial journalist and prepared a story for an investor magazine. It was published in 2001. Cautiously written, it provided alarm bells for anyone who understood the way the industry was supposed to operate.

Markopolos expected the story would blow Madoff out of the water — financial regulators would read the story and start investigating. But nothing happened. Big investors, who should have known better, were too hooked on Madoff's returns to start questioning his methods. Apparently the SEC didn't even subscribe to the investor magazine — it had no budget for monitoring the financial press, and employees had to buy publications themselves.

Later, Markopolos went to the *Wall Street Journal*, where he found an interested and knowledgeable journalist who wanted to run with the story. But the journalist kept putting the Madoff story on the back burner while working on other stories. This went on for a couple of years.

It was 2008 and the beginning of the global financial crisis. Madoff, with his steady returns, was still seen as a safe investment. However, some investors needed their capital urgently, and Madoff couldn't supply it, because his whole operation was a shell. In December, Madoff admitted he was running a Ponzi scheme, was arrested and sentenced to decades in prison.

The media soon found out about Markopolos and besieged him. He was a hero. Markopolos had one prime target: the SEC. He wanted it totally reformed or else abolished.

So what did the SEC do? Senior figures started saying there hadn't been a whistleblower about Madoff. Markopolos went into action, prepar-

ing documents to expose the SEC. He again worked with the *Wall Street Journal* — this time a different journalist. When the SEC found out that the newspaper was going to publish documents showing there was indeed a whistleblower, it capitulated.

In early 2009, Markopolos testified before a Congressional committee, and slammed the SEC heavily. Members of the SEC also testified, so poorly that the committee members were enraged. Heads rolled at the SEC, and Markopolos is hopeful that the new SEC might be better. It is too soon to tell.



Markopolos is a very rare species of whistleblower: he was totally vindicated. It was the collapse of Madoff's Ponzi scheme that made the difference, as well as the total failure of financial regulators.

Markopolos knew what he was doing. Some years before 2008, he quit the financial industry and became a fraud investigator. He worked with whistleblowers to challenge fraud. He learned both first-hand and through his fraud-investigation work all about what happens to whistleblowers, and became a vocal supporter of their role.

The only chance the SEC had to even the playing field was the extensive use of whistleblowers. The agency needed people on the inside to expose corruption, but it offered no incentives to encourage those people to come forward. This isn't true only in the SEC; it's pervasive throughout government agencies and private industry. People who come forward to expose corruption risk their jobs, their personal relationships, and even their lives. Rather than being celebrated for their honesty and integrity, too often they end up alone and embittered. The sad truth is that in too many cases whistle-

blowers have gotten badly screwed. In the past few years I've come to know several of them well, and this includes people who have received large rewards for exposing frauds that robbed the government of hundreds of millions of dollars, and the truth is that many of them are sorry they ever got involved. The money they eventually received wasn't worth what they had to go through simply to do the right thing. (p. 64)

Markopolos had several advantages as a whistleblower. He was independent: he didn't work for Madoff; his job was not at risk. He worked with a team of experts, all dedicated to the same goal. He knew the technical side of his work extremely well, and prepared authoritative treatments exposing Madoff.



Harry Markopolos

But it wasn't easy. Markopolos protected his home with elaborate security and began carrying a gun. He was worried because it was likely that laundered proceeds of organised crime were being invested with Madoff, and the criminals would not want the scheme exposed.

Markopolos' book *No One Would Listen* is readable, comprehensive and exciting. As the subtitle indicates, it is a financial thriller. It leaves me with only two questions. Why didn't Markopolos think of putting all his information on the web? And if he had, what would have happened?

After Madoff's operation collapsed, investors from several continents lost their money — billions of dollars worth. This included banks, investment funds and individuals who trusted Madoff and had given him their life savings. They were broke.

It was by far the largest financial fraud in history. For eight years, Markopolos tried to expose it but, to

quote the title of his book, no one would listen.

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FILM REVIEW

## **Petition: the court of complaints**

Director: Zhao Liang

Reviewed by Kim Sawyer

On October 12, 1992, I was among a number of colleagues who signed a memorandum requesting an inquiry into management practices in a department at a university. That was the day I became a whistleblower. It was also the day I became a petitioner. Whistleblowing is often a form of petitioning, that is, petitioning a higher authority to rule on the administrative decisions of a lower authority. The petition that I signed in 1992 was formalised the next year when four of us petitioned the Governor of Victoria in his role as the Visitor of the university (the Visitor is a form of academic ombudsman). I did not appreciate the significance of the word petition at the time. Nor did I connect petitioning to whistleblowing until I saw the Chinese film *Petition* at the 2010 Melbourne International Film Festival. It is a film for every whistleblower and, indeed, for any person with an interest in the dissolution of human rights.

In China, when an individual wants to complain against a local official or against a decision which has violated their rights, they complain to higher authorities in Beijing. This process of complaint is called petitioning and those who complain are called petitioners. It is a formal process, also known as Letters and Visits (Xinfang and Shangfang), which has its origins in China's imperial past. It is China's way of monitoring the corrupt local official. Some have described it as China's safety valve. But it is a safety valve which has lost its steam. The *New York Times* recently asserted that the Chinese government no longer discloses the annual number of petitioners. The most recent figures show that more than 10 million people petitioned the government in 2004 but, according to a Tsinghua University study, only 0.2% of complaints were

resolved. The road for a petitioner in China is not a silk road. Because the government regards the number of petitioners as a measure of bad rather than good governance, there are now significant incentives for local governments to reduce the number of petitioners and to stop them militating against their authority. The petitioners have become too numerous, too diverse, and they have congregated too much. We can reasonably assume that if Whistleblowers Australia were in China, it would be banned.



Zhao Liang

For a filmmaker to make a documentary about petitioning and petitioners shows exceptional courage. The director and cinematographer of *Petition*, Zhao Liang, should be in a Pantheon of whistleblowers. His documentary, while not always transparent, is compelling viewing, right from the first scene at the Petitioners' Village in Beijing. The Petitioners' Village was a village where those who petitioned the government could position, prepare and petition. It existed from 1996 to 2008 during the time the film was produced. There was even a Petitioners' Hotel. Imagine the equivalent in Australia, a Whistleblowers' Hotel. Unsurprisingly, both the Petitioners' Village and the Petitioners' Hotel were bulldozed in 2008 by the Chinese authorities to make way for the Beijing South railway station to be used at the Olympics. Petitioning has its price.

*Petition* is a story of dissent, but mainly it is a story of lives lost in an endless loop of red tape and waste. One of those lives is of Qi, who is in Beijing to petition for compensation

for the death of her husband who was beaten to death by local officials. Qi is obsessed and persistent, as only a legitimate complainant must be. But she is also selfish. The story of Qi, which punctuates the film, becomes the story of Qi and her daughter Ju'an. At the beginning of *Petition*, Ju'an is only twelve years old, a child living in the Petitioners' Village. Ju'an is the dependent of a petitioner, and her childhood is bound up by petitioning. She knows no life except petitioning. She grows up as an unwilling petitioner. Eventually she rebels, leaves Beijing with her boyfriend, but returns years later with her husband and son. Her mother is still petitioning. The implication of Qi and Ju'an's story is there for all of us. A petitioner, just like a whistleblower, sacrifices much to be a petitioner. But should they also sacrifice the lives of their children? There is a limit to sacrifice.

Whistleblowing and retaliation are nearly synonymous. In China, just as petitioning is formalised, so retaliation is formalised. Retaliators are called retrievers. They are retaliation specialists. Retrievers appear regularly in the film; they are engaged by local authorities to deter the petitioners. Usually they do more than deter. Retrievers are often hired thugs, hired to scare the petitioners back to their homes, more likely back to jails or mental hospitals. In one scene in 2006, a group of petitioners recover the jaw, the severed hand and other body parts of an elderly female petitioner, killed by a passing train as she was fleeing retrievers. No charges were laid and there was no investigation. A spontaneous protest by fellow petitioners was immediately broken up by the authorities, also known as the retrievers. The invisible hand of retaliation is more than visible in China. And the petitioners are regarded as their fair game.

*Petition* is a harrowing film, but it could have been more harrowing if the lives of the petitioners were followed into the psychiatric wards to which many of them were assigned. The petitioner Qi, for example, spent five years in a psychiatric ward, but that is only mentioned as a cursory addendum to the main script. In a recent *New York Times* article, the incarceration of Chinese dissidents in mental hospitals was profiled. The case of Xu Lindong,



a poor village farmer from Henan province, exemplifies the risk of whistleblowing in China. As the *Times* noted “Angered by a dispute over land, he had merely filed a series of complaints against the local government. The government’s response was to draw up an order to commit him to a mental hospital — and then to forge his brother’s name on the signature line.” He spent six and a half years in two mental institutions, endured 54 electric shocks, was tied to his bed and injected with drugs. Unsurprisingly, he attempted suicide three times. Xu Lindong’s case is not isolated. As the *Times* noted, Liu Feiyue, the founder of Civil Rights and Livelihood Watch, a Chinese human-rights organization, said his group had compiled a database of more than 200 Chinese citizens who were wrongly committed to mental hospitals in the past decade after they filed petitions against the government. Liu Feiyue believes the number to be significantly higher because his organization’s list was compiled mostly from accounts on the internet.

As all whistleblowers know, whistleblowing is tough, even in countries where whistleblowing has some, albeit limited, legitimacy. In China whistleblowers are illegitimate, yet they are encouraged to test their legitimacy through an imperial system of petitioning. China’s petitioning system is an obscene dilution of humanity, which consigns legitimate complainants to a lifetime of torment. Every whistleblower should see *Petition*, if only to reinforce their empathy for other whistleblowers.

Reference: “Assertive Chinese held in mental wards,” *New York Times*, 11 November 2010

Kim Sawyer is a longstanding advocate for whistleblowers.

## Cops bash cops, too — the Queensland police

Peter Pyke

Media release, 13 October 2010

IN 1994 I told then-Queensland Premier Wayne Goss that “politicians thought they were pretty powerful but — in our system — it was the police

who had all the power.” Goss, a former-lawyer, looked blankly at me. He just didn’t understand what I was on about. As a first-time Member of Parliament I had just told him that I was about to be charged by police with a number of criminal charges which I have always maintained were false, and the jury who acquitted me later seemed to agree. But I was a mere backbencher in his government and he had a huge majority so why should he care? It seemed to me he didn’t.



Peter Pyke

When Goss lost office in the next election by just one electorate — the ALP now understands that was my seat of Mount Ommaney which I had lost by a handful of votes after the coppers had smeared me beautifully in the media for fifteen months as only they can do — he may have better understood what I had told him.

The Queensland police — whose campaign slogan is the ironical “with honour we serve” — changed the outcome of the 1995 Queensland election in favour of a Borbidge-led government which — happily for some — let convicted and disgraced police commissioner and junior Rat Pack member Terry Lewis out of gaol four years early. But who’s counting?

This week we have seen more of the handiwork of the Queensland coppers with the release of heavily censored CCTV footage of the bashing of handcuffed prisoners in the custody of that outstanding example of one of Queensland’s “finest,” former-senior constable Benjamin Thomas Price, who is shown bashing a tourist and a barmaid at the Airlie Beach police station in the state’s north.

The ex-policeman, 34, was sentenced to 27 months’ jail on 11 October 2010 after pleading guilty to four counts of assault. Steele, a plasterer from NSW, suffered a broken

nose, black eyes, a head wound, hearing problems, memory loss and lack of sensation in his arms and hands after his arrest in the popular Whitsundays tourist town. He told the court he was trying to break up a fight between two mates when he was capsicum-sprayed by police. It is alleged Price led the handcuffed Steele to a police car before saying “watch your head” and smashing his face into the vehicle, knocking him unconscious.

Price allegedly dragged Steele from the car outside Airlie Beach watch-house, repeatedly punched him and “kicked him with his boots” in the face, breaking his nose.

CCTV video footage from the police station shows a dazed, heavily bleeding Steele being dragged into an alley beside the watch-house. It shows the handcuffed man being punched in the head before having a fire hose jammed into his mouth, where it was held for up to 90 seconds as another officer watches.

Steele screams and groans in agony and blood can be seen sheeting down the concrete path as the policeman stands on the handcuffs, pressing his hand into the back of the man’s neck, forcing his head into his lap in a brutal spine lock.

“I felt like I was going to drown,” Steele told the court. “He jammed the hose into my mouth. I couldn’t breathe. I was coughing and spluttering blood. It was pretty scary. It went on for a long time. I called him a pussy. He knocked me about. I was pretty dazed, I’d had a boot to my face, my nose was broken. I was choking on my own blood, I felt like I was drowning.”

The vision shows other police officers standing by as Price stuffs a fire hose into his victim’s mouth, nearly drowning him. The CCTV footage also shows Price hitting slightly-built barmaid Renee Tom, 21, slamming her to the floor inside the watch-house in January 2008 and pulling her to her feet by her hair.

As a former police officer who saw service as an operational trainer and academy law lecturer, I know full well that any one of the other police who observed Price’s actions could have stopped Price and even arrested him on the spot for each of his savage bashings. So what happened? Only one of the police shown in the censored



footage with their faces blurred did something; it was left to courageous female trainee constable Bree Sonter to do the right thing and to complain about the incidents.

Queensland police deputy commissioner Ian Stewart told reporters on 11 October 2010 that five other officers had resigned and three more were facing potential disciplinary actions over the incidents. All of the other officers who did nothing were complicit in the offences in my opinion.

It was my honour to be sworn in under Commissioner Ray Whitrod in 1976 — Whitrod was a real police commissioner. I immediately saw service in North Queensland and soon discovered that police bashings of Aboriginal and homosexual citizens were everyday sport for far too many Queensland police. It's easy to say, but individual police have the power to control the behaviour of their peers by stepping in and stopping offences like those committed by Price. I know, I was bashed several times in the Townsville watch-house and once out on the street by my police colleagues for intervening to stop other officers from assaulting prisoners.

As I said at the outset, each individual police officer has the power to arrest anyone, the premier, the prime minister, or another officer. With such power comes enormous responsibility.

That's the job and that is what is required. Don't like it? Coppers who aren't up to it should get out of the kitchen.

Prisoners were being bashed in the custody of Queensland police in the 1970s and we now have incontrovertible evidence they are still being bashed, even under the watchful eye of CCTV. Too many police thugs are protected by their peers and deaths in police custody will continue to occur while other officers fail to serve with real honour.

Is it all bad? As someone who will bleed a little bit blue until the day I die, I like to listen to the police radio on the scanner when I am writing, or driving around. While the Queensland police are badly led by their most senior officers whom I wouldn't feed, I can report that many of the uniformed officers who undertake first-response operational duties do an excellent job. It is with pride that I can report hearing

more often than not in the voices of police on the scanner their obvious humanity and concern for children, young people, battered women, the homeless and the elderly, and I commonly hear police going to great lengths to ensure that everything possible is done for people who need police assistance.

No, it's not all bad.

If there is a hero in this sad story it is Constable Bree Sonter who did serve Queenslanders with honour.

I call on the Queensland Government to appropriately honour this young woman with the highest police award.

Contact Peter Pyke at 0427 388 598, [pykie@republicandemocrats.org.au](mailto:pykie@republicandemocrats.org.au)

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## Farewell Albert Lombardo: an honest man

FOLLOWING 22 years of unceasing battle for justice, as outlined in *The Whistle* of October 2009, Albert Lombardo deceased on 8 February 2010.

Authority's perjury that closed his family's responsibly conducted business, culminated in the sudden death of his wife, and contributed to Albert's poor health, continues to be concealed but not forgotten.



Albert Lombardo and his wife Luigina

During 2009 Albert and myself repeatedly requested the Environment Protection Authority Victoria to inform the State Parliament of perjury by an EPA official that was employed against Albert and the company. We noted that the initial perjury is self-evident in EPA documents accessed under FOI.

The EPA replied repeatedly with the misleading mantra that "the matters raised have been dealt with through the judicial system." The EPA's legal strategy from the outset was arguably designed to ensure that the damaging evidence would never be subject to judicial examination. The fact is that it never was subject to judicial examination!

The EPA's mantra is misleading in that the Authority's legal strategy facilitated evasion of judicial examination.

In October 2010 the EPA was again requested to inform the Parliament of the perjury that caused devastating irreversible damage to the Lombardo family.

Too few Australian citizens are old enough to know and care about the potential adverse consequences for their children of allowing authority to conceal its criminal maladministrations.

Keith Potter

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## Responding to dissident scientists

Brian Martin

BECAUSE of my research on suppression of dissent in science, I regularly receive correspondence from scientists telling me about their experiences and asking for advice.

Below are five unsolicited emails sent to me in 2007. Some of them I have shortened. Furthermore, I have changed names and details about the research to hide the identity of the correspondents. For example, in the first letter, I made up the term "xitiferation" and the associated references to "extension" and "atypicals."

My responses are pretty much as I wrote them, except that in several cases I've omitted links to my articles. I often recommend "Challenging dominant physics paradigms" (co-author: Juan Miguel Campanario), [www.bmartin.cc/pubs/04jse.html](http://www.bmartin.cc/pubs/04jse.html) and "Advice for dissenting scientists," [www.bmartin.cc/pubs/98jse.html](http://www.bmartin.cc/pubs/98jse.html).

If others have examples of how they respond to whistleblowers and dissidents, I would be pleased to consider them for *The Whistle*.

Note: the photos are of dissident scientists, with their actual names.

### Letter 1

From: Robert R Zantos  
Subject: Suppression of my article on unusual xitiferation

Dear Prof. Martin:

1. My group has had publications indicating that the xitiferation-only theory is incorrect and that there is another form of cellular activity which, interacting with xitiferation, is the basis of extension.
2. In answer to this dilemma, the xitiferation-only Establishment has claimed that extension occurs via unusual xitiferation. It is a huge establishment now, lushly funded.
3. I have written (with Dr. Lodge) a commentary showing that the existence of atypicals negates unusual xitiferation; in this commentary, I also describe the crucial relationship between atypicals and features of organisms.
4. To date, 6 journals have rejected this commentary.
5. We have committed two major sins: A. We are confronting a doctrine that is hugely profitable to the Establishment; B) we are right.

I hope you can help us get published in the interest of open scientific debate and in order for us to get the proper credit, or discredit.

Robert R Zantos, M.D.

...



Halton Arp, dissident scientist

### Response 1

To: Robert R Zantos  
From: Brian Martin  
Subject: dealing with suppression

Dear Robert,  
Unfortunately there are seldom quick solutions to marginalisation. Truth alone is hardly ever enough.

I think you need to treat your challenge to the establishment as a long-term project, and work out a long-term strategy. Even should your six-times-rejected paper be eventually published, that does not guarantee recognition. It could easily just be ignored.

It may be worth considering some of the following options.

- Continued efforts to publish in leading journals.
- Publication in lower-status journals.
- Personal contact with scientists supporting the dominant view, especially those without high commitments to it, to find possible allies. Students and junior researchers may be especially promising.
- Analysis of papers and discussion with individuals to find the points of greatest leverage for mounting your challenge.
- Development of an attractive website with a concise summary of the key issues, copies of papers and detailed critiques of the dominant position.
- Taking the issue to wider audiences, including scientists in related fields and perhaps beyond, for example through talks and popular articles.

Regards,  
Brian

### Letter 2

From: Johnston  
To: <bmartin@uow.edu.au>  
Subject: after reading "Challenging Dominant Physics Paradigms", something that may interest you

Dear Brian Martin

I started investigating cloud expropriation, spending countless hours in our local technical library, and soon

arrived at the conclusion that expropriation theory made no sense.

By the mid to late 1990s I was writing papers aimed at physics journals. My only qualification is an honours degree (4 years in my country) in physics. I soon learned not to tell who I was or why I was doing this. Eventually I was led to *Physics Tomorrow*. The referees basically said, in so far as you can explain everything, you have no proof. I found a 2001 paper from a group in another country studying extreme condensation (signatures of dissolving clouds). They provided a graph for the signatures required to expropriate various sized clouds at various pressures.

It was an exact fit to one of my equations. Now the referees had a quandary. I had found the proof that they said I could not find. So they started probing into who I am. Well sadly I am not one of them, not having a PhD in expropriation research. So the referees wanted no part of what I said. The editor published my paper anyway, because I did what the referees requested.

Cheers, god bless, Johnston Friendly

...



Robert G Jahn, dissident scientist

...

### Response 2

To: Johnston Friendly  
From: Brian Martin  
Subject: challenging dominant theory

Dear Johnston,  
The way you've been treated is disgraceful, though fairly much the standard, sorry to say. The worst part

is the way you've been dismissed because you're not a professional researcher. This is the usual treatment even though it goes against the norm that ideas should be judged on their merits, not on who's presenting them.

One way around this prejudice is to obtain an honorary position (unpaid affiliation) at a university, to give you credibility when writing to journals. Probably it would be worth contacting dissident physicists who are at universities and asking their advice about this.

Your best bet for publishing your work is directly on the web. As well as your book-length treatise, I would advise having a short account of the key ideas, article length, as well as a briefer overview of your findings. And you should post your *Physics Tomorrow* paper on the site as well. It's useful to look for websites that allow a non-expert to get a sense of what the issues are all about, and model your own site on one of your choosing.

Regards,  
Brian



Domina Eberle Spencer,  
dissident scientist

### Letter 3

From: Glennnda Francesca  
To: <bmartin@uow.edu.au>  
Subject: suppression of data

I am in the process of writing a paper about my ordeal and the consequent suppression of data on the prevalence of jamaliasis diagnosis and drug treatment. The study was part of a multi-million dollar, multi-site investigation. Data from the site with notably high prevalence findings was suppressed as a result of false allegations of scientific misconduct, perhaps mismanagement of the investigation, and irresponsible journalism. I would appreciate any

references of which you may be aware that speak to the issue of ensuring press scrutiny while also protecting academic venues and publications from falling prey to the increasingly popular trend in journalism to engage in reputation assault over careful issue analysis.

Glennnda Francesca

...

### Response 3

From: Brian Martin  
To: Glennnda Francesca  
Subject: Fwd: suppression of data

Dear Glennnda,  
Congratulations on your courage in speaking out about jamaliasis diagnosis and treatment and for surviving the onslaught.

I'm not sure that the media are any worse than before. Whistleblowing is increasingly recognised by the media; scientific fraud remains a hot media topic. Your persecutors were able to use these news priorities in framing the story as whistleblowing about your alleged scientific misconduct — not the first time it's been done. But in your case it didn't work — in many cases, unfortunately, it does.

It's excellent that you're writing about what happened. These sorts of stories are highly valuable to others experiencing the same sort of thing.

You could use the backfire framework that I've developed to look at the tactics used by your opponents (<http://www.bmartin.cc/pubs/backfire.html>). By accusing you of misconduct they deployed the tactics of devaluation and intimidation, and I'd expect that cover-up, reinterpretation and official channels were involved too. Going public and gaining support from professionals was a powerful way of responding. If you can tell your story in terms of tactics used against you and the ways you responded to them, this will make it really useful to others.

Regards,  
Brian

### Letter 4

From: Smithy Sketchner  
To: <bmartin@uow.edu.au>  
Subject: suppression of dissent in inner physics

Hi Brian:

I was fired from my job as a research assistant at a university after my boss, a professor, and I had differences over a report that I wrote. A big part of my job was extra analysis. The report I wrote exposed a number of problems with the instrument that were omitted from some reports that my boss wrote for the government agencies that were funding and overseeing the project.

After I completed my report I sent it to my boss and I told him that I thought the agencies should read it. He disagreed, saying my report had too many mistakes in it. Soon after this, representatives from those agencies were coming to our university to meet with us to discuss the instrument. About two days before the meetings my boss told me I could not freely discuss my report with the agencies. Then I was told I was not permitted to attend the meeting.

About two weeks later the project leader from one of the agencies wrote to tell me my report had "a lot of valid points" and was "extremely useful."

Cheers, Smithy

...



Tom Van Flandern, dissident scientist



#### Response 4

To: Smithy Sketchner  
From: Brian Martin  
Subject: suppression of dissent

Hi Smithy,  
What you've described certainly can be described as suppression of dissent. If your supervisor has tried to hide inadequacies from the funding agencies, this is a form of deceit, fraud, corruption, call it what you like. You've tried to be honest about problems and that seems to have cost you your job.

You ask whether your supervisor could be fired for his actions. It's pretty hard for any subordinate to bring down a supervisor, even for serious transgressions, because people higher up almost always support the line of command.

It's very unlikely that official processes — such as complaining to university officials, complaining to the funding agency or going to court — will help you in the slightest. Publicity is the probably the only tool for exerting much leverage, and even then dismissal seems unlikely. However, publicity could damage his scientific reputation quite seriously, which is a major impact.

Regards,  
Brian



Peter Sturrock, dissident scientist

#### Letter 5

From: Ernest Elgans  
To: bmartin@uow.edu.au  
Subject: Defamation of Scientists

Dear Brian

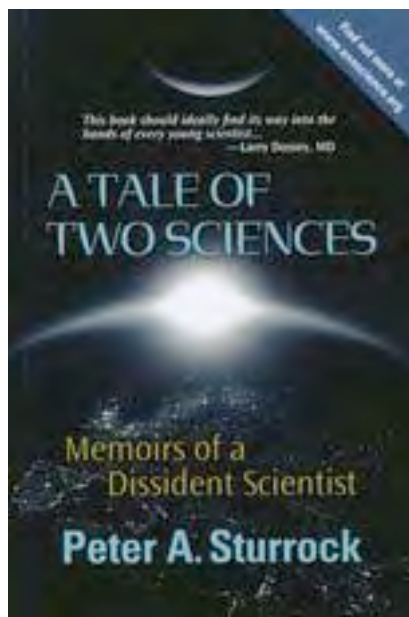
I wonder if you would care to venture an opinion as to whether the proposed broadcast of the Durkin "Great Global Warming Swindle" could constitute grounds for a class action suit for defamation and damages on behalf of scientists and the professional societies that represent them.

I believe that it may because it asserts broadly that scientists falsify their data for personal gain. Because scientists working in "public good" research (ecologists, climatologists, etc.) rely substantially on the trust and goodwill of the community to fund their research (and salaries) this could be very damaging. Also, the trust and goodwill between the community and scientists is one of the very few compensations for pursuing a poorly paid and very insecure career path. The loss of, or damage to, this trust and goodwill is, I think, the essence of defamation.

What do you reckon?

Dr Ernest Elgans — a concerned scientist

...



Charles Darwin, dissident scientist

...

#### Response 5

To: Ernest Elgans  
From: Brian Martin  
Subject: Fwd: Defamation of Scientists

Dear Ernest,

I've never heard of a class action defamation suit, but even if it's possible I think it would be a mistake. Suing, or making other threats, can easily be painted as censorship and be used to generate greater support for the climate change sceptics. It's far more effective to respond in a factual, calm, dignified way, using the swindle programme to generate more attention to global warming.

Sue Curry Jansen and I have written a couple of papers about how censorship can backfire. See [www.bmartin.cc/pubs/backfire.html](http://www.bmartin.cc/pubs/backfire.html). One example is the attacks on Bjørn Lomborg, author of *The Skeptical Environmentalist*. I don't agree with Lomborg but I think it was a mistake to attack him personally.

Regards,  
Brian



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# WBA AGM 2010: draft minutes

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## Draft minutes of the Whistleblowers Australia Annual General Meeting

Emmanuel College, University of  
Queensland, Brisbane, Queensland, 28  
November 2010

### 1. Meeting opened 9.13am

Meeting opened by Peter Bennett,  
president

Minutes taken by Brian Martin as the  
secretary-elect was not in attendance

### 2. Welcome and opening address

Peter Bennett thanked Greg McMahon  
for organising the meeting; Greg in  
turn thanked Kevin Lindeberg and  
Frances Scholtz for support. Peter  
commented on the way whistleblowers  
and information are being managed.  
We need to look not only at how to  
protect whistleblowers but at how to  
address corruption.

**3. Members attending:** Feliks Perera,  
Cynthia Kardell, Robina Cosser,  
Graham Gardem, Brenda Pasamonte,  
Frances Scholtz, Katrina McLean,  
Margaret Marshall, Gerry Dempsey,  
Lisa Hamilton, Greg McMahon, Brian  
Martin, Peter Bowden, Stacey Higgins,  
Peter Bennett, John Pezy and Shelley  
Pezy.

Guests and members of the public:  
Linda Bradbury, Pam Swepson.

**4. Apologies:** Lesley Killen, Bob  
Steele, Jean Lennane, Geoff Turner,  
Dave Reid, Ross Sullivan, Jeanne  
Berger, Margaret Love, Gary Dalton,  
Brian Holden, Mathew Bazeley, Judith  
Merari-Lyons

### 5. Previous minutes AGM 2009

Peter Bennett referred those present to  
their copies of the draft minutes, which  
were published in the January 2010  
edition of *The Whistle*.

Peter invited a motion that the minutes  
be accepted as a true and accurate  
record. Proposed: Feliks Perera. Sec-  
onded: Robina Cosser. Passed.

5(1). Business arising: Nil

### 6. Election of office bearers

Peter Bennett, nominee for the position  
of national president, stood down for  
Brian Martin to proceed as chair.

#### *Position of President*

There were two nominees: Peter  
Bennett and Cynthia Kardell. Brian  
explained the process of voting.  
Members present had one vote each,  
and several members held proxies:  
Robina Cosser (1), Cynthia Kardell  
(5), Brian Martin (2) and Feliks Perera  
(2). Some members favoured a secret  
ballot whereas others favoured an open  
ballot. Following a discussion, a vote  
was held about what sort of ballot to  
hold. By show of hands, a secret ballot  
was chosen. Peter withdrew his  
nomination, and Cynthia was declared  
president. Brian thanked Peter for his  
contributions and commitment.

#### *Other executive positions*

The following, being the only nomi-  
nees, were declared elected.

Vice President: Brian Martin (Cynthia  
was chair for this declaration.)

Junior Vice President: Robina Cosser

Treasurer: Feliks Perera

Secretary: Jeannie Berger

National Director: Greg McMahon

#### *Ordinary committee members*

(6 positions)

The following were nominated: Geoff  
Turner, Shelley Pezy, Toni Hoffman,  
Katrina McLean, Margaret Love, Lisa  
Hamilton, Stacey Higgins. Because the  
number of nominees was greater than  
the number of positions, a vote was  
held. Peter Bowden and Gerry  
Dempsey were scrutineers. Geoff  
Turner, Toni Hoffman, Katrina  
McLean, Margaret Love, Lisa  
Hamilton and Stacey Higgins were  
elected.

John Pezy and Peter Bowden, as the  
branch presidents of SA and NSW  
respectively, are automatically on the  
national committee.

Cynthia chaired the remainder of the  
meeting.

### 7. Public Officer

Feliks Perera told the meeting that  
Vince Neary, the current Public

Officer, was willing to continue in the  
position if required. Cynthia asked  
whether the meeting would accept his  
offer.

Agreed: Vince's offer, to be accepted  
with our thanks.

### 8. Treasurer's report: Feliks Perera

Feliks tabled a financial statement for  
the 12-month period ending 30 June  
2010: a copy had been circulated to the  
attendees before the meeting. A motion  
was put to accept the financial state-  
ment. Moved Frances, seconded  
Robina. Passed.

Here is Feliks' report.

Once again I am happy to present the  
annual accounts of the Association for  
the year ending 30 June 2010.

During the financial year, we were  
been able to maintain a steady mem-  
bership. For the period 1 July 2009 to  
30 June 2010 the Association had 103  
paid up members. As the work of the  
Association depends on the support of  
members, I once again appeal to the  
current membership to commit them-  
selves to bring in one more person to  
the fold.

We have also had a very generous  
response of donations from the  
membership which totalled to \$788.40.  
This is indeed a clear indication of the  
appreciation of the work WBA is  
doing.

The Annual Conference held in  
Adelaide was a huge success, and our  
thanks go to John and Shelley Pezy  
and their supporters for all their  
efforts. The conference generated a  
profit of \$80.09.

The Association received a legacy  
in the sum of \$10,120.55 from the  
estate of Mr P G Valence. Mr Valence  
was always a keen supporter of the  
work of Whistleblowers Australia. I  
clearly remember the short messages  
of support he sent me, expressing his  
appreciation of the association and its  
work. On behalf of the membership, I  
have sent his executors a message of  
grateful thanks and appreciation of this  
very generous bequest.

At 30 June 2010, the Association  
had no outstanding creditors or li-  
abilities.

Once again, I appeal to the current membership to continue supporting the organisation and its work. There is much to be achieved in the years to come. We can only move forward by not losing sight of our primary goals, which is the cause of whistleblowing without reprisals, and the support and welfare of our members.

Details of the annual statement of accounts are as follows:

#### **Income**

Subscriptions, \$3,380.00  
Donations, \$788.40  
Bank interest, \$2.75  
Surplus from Adelaide conference, \$80.09  
Legacy from Valence estate, \$10,120.55  
Total income, \$14,371.79

#### **Expenditure**

Whistle production, \$2,309.15  
Office of Fair Trading, \$64.00  
Website licence fee to 2012, \$46.90  
Return to branches, \$250.00  
Total expenditure, \$2,670.05

#### **Excess of income over expenditure for the year, \$11,701.74**

#### *Balance sheet as at 30 June 2010*

Total accumulated fund brought forward from 2009, \$13,825.35  
**Add income over expenditure, \$11,701.74**

**Assets** (balance at bank) as at 30 June 2010, \$25,527.09

The meeting agreed to nominate Vince Neary to sign the appropriate form for the Department of Fair Trading.

## **9. Reports**

#### **Cynthia Kardell: secretary**

Cynthia described the work she had been doing and commented that she had enjoyed being secretary.

#### **John Pezy: South Australian branch report**

This is the text of John's report. The activities of the SA Branch of WBA in 2010 has involved fielding inquiries from the public, giving support to local members and pursuing devel-

opments from the conference that was held in SA last year. The theme of the conference was "Blowing the Whistle in the Workplace".

The keynote speaker at the conference was Janet Giles, Secretary of SA Unions, who asked us to keep in touch and we took up this invitation in 2010. John Pezy, Bernadette Finnerty (WBA member and organiser with the NTEU) and Shelley Pezy formed a working group to meet and discuss how to progress the issue. The main questions to emerge from our discussions was how much understanding was there in the union movement of whistleblowing and are there any whistleblowing training courses run for industrial officers?



John Pezy

We got back in touch with Janet Giles who facilitated a meeting with Angus Story, a Senior Industrial Officer with SA Unions. When we met with him Angus informed us that there was very little awareness in SA Unions or to his knowledge in any other union about whistleblowing legislation or what whistleblowing is, let alone how to deal with such matters. No training on whistleblowing is given to industrial officers. Angus agreed that this is an omission from the industrial officers' training. In further discussions whistleblowing was identified as an occupational health and safety (OH&S) issue, in that there is an expectation that employees will disclose malpractice, bullying, harassment and intimidation and that the consequences of this to the worker almost invariably amount to a workplace injury under the Fair Work Australia Act through the industrial courts. This was seen as very much the business of the union move-

ment.

Angus undertook to have discussions with the ACTU trainers about including a module in the regular OH&S training courses on whistleblowing legislation and the surrounding issues. In recent months Angus has been very much involved in the issues surrounding Ark Tribe, a victim of the draconian Howard Government work place legislation.

However this matter has now been resolved and our working group will be meeting with Angus on 8 December to discuss what information to include in the whistleblowing module of the ACTU training course and what role WBA can play in determining the content.

#### **Peter Bowden: New South Wales and education reports**

The biggest event of the year in the state was passing amendments to the Protected Disclosures Act. This fits a worldwide pattern of legislation becoming stronger. Peter Bowden and Peter Bennett made submissions about private sector whistleblowing. This is a big issue.

Peter is part of an ethics organisation that is working on a book about professional ethics, including a chapter on whistleblowing. Peter's comments about ethics teaching in NSW schools led to a discussion about various matters.

#### **Geoff Turner: communications report**

Geoff was unable to attend and had asked Cynthia to report in his stead. Cynthia reported he has upgraded the website with material written/prepared by her. See for yourself at <http://www.whistleblowers.org.au/>.

#### **Brian Martin: international relations and The Whistle**

Brian reported that WBA is the only major national whistleblowing organisation whose members are primarily whistleblowers. Some other countries — including United States, Canada and Germany — have whistleblowing groups, but these are either oriented to sectors of the workforce, are made up of lawyers who support whistleblowers, or are less comprehensive than WBA. Therefore WBA is seen by some as a model. We need to realise that we're doing some things well and build on our strengths.

In recent years, a major change in the scene has been opportunities for leaking, most prominently via Wikileaks.

*The Whistle* continues on much as before. Contributions welcome!

#### **Robina Cosser: teachers website**

Robina told about her website “The teachers are blowing their whistles,” including how teachers came across the site (most are concerned about pay, jobs, contracts and remote area teaching). The website covers issues that teachers should be concerned about, including bullying and false allegations.

Robina used a diagram to show links between websites: she had figures about the number of visitors who followed links to related sites, such as Karen Smith’s. She gave special note to the number of website visitors who were looking for legal advice.

Robina commented on the limitations of union support for teachers: principals are also in the union, so the union has to support both teachers and principals in disputes between them.

#### **Peter Bennett**

Peter has addressed a couple of Chinese delegations, whose members were interested in legislation at state and federal levels as well as general principles. Peter visited Ludwig’s office in Canberra concerning whistleblower legislation. He and Peter Bowden made submissions and attended a hearing concerning corporate whistleblowing. He made a submission concerning journalist shield laws. He has promoted incorporation of a whistleblowing provision in the enterprise agreement for the Customs Officers Association.

#### **Frances Scholtz**

Frances raised the problem of obtaining donations. Donors to organisations like the Red Cross and political parties can receive tax deductions, but donors to WBA cannot. Frances supports raffles to raise money but hasn’t had support from others. Frances pursued support for the WBA conference but had great difficulty obtaining it. She did obtain a fair bit of publicity, for example notices on radio station 4ZZZ. The question she raised is why all her

efforts to publicise the conference led only to 38 attendees.

#### **Greg McMahon: Queensland**

Greg said that Queensland media will not report anything to do with the Heiner matter, which makes it difficult to generate publicity. Greg reported efforts to address parliamentary committees overseeing watchdog bodies such as the Crime and Misconduct Commission. He is continuing with the programme concerning whistleblowers of national significance. New focus: environmental whistleblowers. Whistleblowers Action Group (a Queensland body separate from Whistleblowers Australia) has authorised Greg to write to Griffith University and the Australian Research Council concerning the Whistling While They Work study.



Greg McMahon

#### **Stan van de Wiel: Victoria**

This is text adapted from an email from Stan.

There has been little new activity in Victoria except for the resignation of long term member Kim Sawyer. Keith Potter is still working away on the Albert Lombardo issues but getting no positive responses from government. Lori O’Keefe had her case torpedoed by her own counsel in the Victorian Supreme Court. She appealed before the Chief Justice but was refused on very dubious grounds — suggesting she sue her own lawyers. Several of us attended both her hearings and were not impressed by the process. In an attempt to again address the Victorian Attorney General, Rob Hulls, on her

case (Workcover) she was forcibly removed by security guards from the foyer of his office.

## **10. Items for discussion**

### **10.1 Review of the rules, procedures and decision-making**

Peter Bennett suggested that the rules (i.e., the constitution) needed revisions. Brian and Graham recommended setting up a group to draft suggestions for change. These suggestions could be circulated to the membership, seeking comments. Then draft proposals for revising the constitution could be tabled in advance of the 2011 AGM. However, no one volunteered to be involved in this process.

### **10.2 WBA website**

Peter Bennett raised the issue of the WBA website, arguing that <http://www.whistleblowers.org.au> is a NSW site but there is no WBA website. Brian said WBA has delegated editorship or administration to individuals, a process that applies to print and electronic media. Brian is editor of *The Whistle*. Cynthia and Geoff Turner administer the WBA website; Brian has a different WBA webpage on his site. Robina and Karen Smith each have their own websites with links to WBA sites.

There was a lengthy discussion about access to membership lists.

The meeting agreed to setting up of a WBA Facebook page administered by Stacey Higgins.

### **10.3 AGM 2011: Sydney**

## **11. Close of meeting, 2.12pm**

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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 7.00pm on the 2nd and 4th Tuesday nights of each month, Presbyterian Church (Crypt), 7-A Campbell Street, 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 contact

Rob Cumming, phone 0428 483 155.

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

**Website** <http://www.bmartin.cc/dissent/>

**Queensland contacts** Feliks Perera, phone 07 5448 8218, feliksperera@yahoo.com; Greg McMahon, phone 07 3378 7232, jarmin@ozemail.com.au

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

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

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Thanks to Cynthia Kardell for proofreading.

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## WikiLeaks

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For the past several months, WikiLeaks has received enormous attention in the mass media and on the Internet. This has been due to both its release of diplomatic cables and the concerted attack on the WikiLeaks operation by its opponents, especially in the US government.

WikiLeaks, it should be remembered, is a recipient and publisher of leaks, but not itself a leaker. It thus operates like a news organisation, though with a style and editorial policy different from the mass media. The efforts to shut down WikiLeaks show the hypocrisy of government leaders with their rhetoric of supporting free speech except when the speech is embarrassing to themselves.

In selecting items about WikiLeaks for this issue of *The Whistle*, the challenge was to find things that would not be dated, given new developments seemingly every day. For anyone who is interested, there is a vast amount of material on the web, including news stories, blogs, videos and the WikiLeaks site itself.

The attention to WikiLeaks has the spin-off benefit of directing attention to whistleblowing. The way whistleblowers are treated is reproduced, on a highly visible and dramatic scale, in the efforts to discredit Julian Assange and the imprisonment of leaker Bradley Manning.

WikiLeaks is a group operation. It could not survive through the efforts of Assange alone. The mass media naturally gravitate towards personalities, but it would be a mistake to assume that the future of online leaking depends on one or even a handful of people.

WikiLeaks has shown what is possible and is bound to have successors. The attempts to discredit and destroy WikiLeaks may have the perverse outcome of encouraging the development of ever more effective avenues for leaking.

## Whistleblowers Australia membership

Membership of WBA involves an annual fee of \$25, payable to Whistleblowers Australia. 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.

To subscribe to *The Whistle* but not join WBA, 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**