

DEBATING THE WHISTLE WHILE THEY WORK STUDY
PROFESSOR MAZEROLLE, GREG MCMAHON and DR BROWN
June 2015

FIRST MESSAGE - G McMAHON

On Tue, Jun 9, 2015 at 11:01 PM, Greg McMahon <jarmin@ozemail.com.au> wrote:
Hello Colleagues,

The Whistleblowers Action Group in Queensland Australia is seeking interest amongst the whistleblower communities in Dublin and London in receiving a presentation / discussion about whistleblower research which we allege has adversely affected the lot of whistleblowers in Queensland and Australia. Perhaps you can assist us to contact them.

WAGQ has been making disclosures about the *Whistle While They Work* [WWTW] research project funded and steered by the principal watchdog authorities in Queensland and Australia. That research was steered by those watchdogs authorities to findings tending to misinform the public in Queensland and Australia about the treatment and risk faced by whistleblowers at the hands of those watchdogs, and at the hands of agencies that are supposed to be 'watched' by those watchdog authorities.

Queensland is a jurisdiction in which systemic corruption has greatly damaged all our principal institutions, including our judiciary. Recently, the Chief Justice made a public statement that the judiciary had become politicised, and called on other judges to assist him to correct this. Other judges are refusing to sit on cases with the Chief Justice, and one has been secretly recording discussions with the Chief Justice. The Rupert Murdoch press appear to be blaming the Chief Justice for his situation, because the Chief Justice had found that the Qld Cabinet were in breach of Queensland's Criminal Code when the Cabinet destroyed evidence related to the management of child abuse in a government institution (google 'Heiner Affair') – the Murdoch Press have been attacking for almost 20 years the whistleblowers and journalists who have been reporting this alleged criminal breach by the highest political office in the State. More recently, an eminent barrister has alleged that the other judges may also be in breach of the Criminal Code for any 'criminal conspiracy' or mutiny against the Office of the Chief Justice.

This situation of systemic corruption has been developing over the last 25 years, since Cabinet destroyed those documents, and is the probable reason why WAGQ is the oldest association of Whistleblowers in the world. The steering of the WWTW project was led by watchdog authorities from Queensland, who were also steering the Queensland justice jurisdiction through the major whistleblower cases that were responding to alleged breaches of the Criminal Code by the Cabinet, by lawyers in high positions, and by the Government agencies under 'watch' by the watchdogs. Those watchdog authorities are implicated in the alleged cover-up of child abuse, and in allowing the 'bad apple' to rot the barrel up to and including the Queensland judiciary. WAGQ is trying to get the facts on whistleblowing in Queensland out of that same barrel.

As the WAGQ President, I am available for participating in any event of preference to local whistleblower communities. I am in Dublin on week days for the last week of July and in

London on week days for the first week of August. Our presentation can focus on the other story of the WWTW research that whistleblowers in other countries do not get at international conferences, but can readily be turned to discussion of what constitutes best practice in conducting research into whistleblowing where systemic corruption may dominate.

Please let me know of any possible interest before 22 June if possible. In the past, we have not been able to get a spot on the Whistleblowers Reserach Conferences, and our offer of holding the Conference in Australia has not met with a reply. We are hoping that the child abuse factor to the story may attract an interest in Dublin, and that the Murdoch press factor might catch an interest in London.

WAGQ is essentially blowing the whistle on the steering of the WWTW research by our watchdog authorities. Like with all whistleblowing, we are having difficulty being heard. We are seeking international assistance in getting a new research project in Queensland and Australia that will include in that research, firstly, the accounts of whistleblowers who have lost their employment, and, secondly, the performances of watchdog authorities who failed to protect these whistleblowers and failed to investigate their disclosures, rather than exclude this critical evidence and omit these evaluations, as occurred in WWTW

Many thanks for any assistance that you can provide

Greg McMahon, MEngSc, MEconSt, BEng, BCom, BSc, BEcon, FAIM, CPPD, CPEng
President WAGQ
National Director Whistleblowers Australia (but not here acting in that role)

SECOND MESSAGE - P MAZEROLLE

From: Paul Mazerolle

Sent: Tuesday, June 09, 2015 11:54 PM

To: Greg McMahon

Cc: natasja.holtzhausen ; Near, Janet P. ; Nick Ciancio ; Oluf Husted ; patrick alley ; Paul Latimer ; paul stephenson ; pavel ; per larsson ; Peter Bowal ; Peter Bowden ; Peter Ezeah ; Prof. Dr. Horst Call ; public concern india ; Radu Ionescu ; Rehg, Michael ; Richard Moberly ; ries baeten ; Rodney Smith ; Roger Kline ; Rosemary Hirsch ; Sarah Wilson ; shannon walker ; Rik.vanSteenbergen@vc.fnv.nl ; Pam Swepson ; A J Brown ; Richard Wortley

Subject: Re: GETTING AN INTERNATIONAL VOICE FOR WHISTLEBLOWERS IN AUSTRALIA

Dear Greg,

What an extraordinary email and suite of observations and accusations. As a member of the research team on the WWTW project, let me pass along some truths about the project. My sense is that AJ Brown, as project leader may also be in a position to comment.

1. The research project was very large in scale and scope. The project was funded by the Australian Research Council after a process of independent peer review.
2. The project was largely a social science research project, although some legal research was also undertaken.

3. The project relied on large scale surveys, interviews, case file reviews, and documentary analysis. In short, the methodology was multi modal.
4. The project had the benefit of a range of linkage/industry partners, many of which were integrity agencies. The partners participated on the advisory board, consistent with good practice. The project was lead by the research team, not steered by outside 3rd parties.
5. The findings from the research has appeared in a range of academic outlets--journals, books, book chapters, generally informed by peer review processes.
6. Like all research projects and research designs there are limitations to the WWTW project. The sample composition issue you refer to near the end of your email is an example whereby a different study of former workers who were whistle- blowers could yield contrary results.

It is important to understand that the WWTW project was a research project not an advocacy project. It is important to bring an objective and independent perspective on such matters to ensure that the findings and observations are examined and interpreted in an dispassionate fashion. As a research project embracing quasi experimental methods, it is beyond argument that future studies using more or less rigorous methods could yield different results or even some similar results. No doubt further studies should seek to build on prior studies. Over time and through the accumulation of research findings researchers will then be in a better position to more fully understand whistle blowing and the range of important and related issues.

By all means, good luck with your research.

regards,

Professor Paul Mazerolle

THIRD MESSAGE - G MCMAHON

On Fri, Jun 12, 2015 at 1:02 AM, Greg McMahon <jarmin@ozemail.com.au> wrote:
Dear Professor Paul Mazerolle,

Again thank you for exchanging correspondence with WAGQ. May I continue with my response to your email of two days ago

I referred in my earlier email to the refusal by the WWTW research team to include data from whistleblowers who were no longer in the employ of the government department against whom disclosures of alleged wrongdoing had been made. This methodology of taking this type of survey is described as 'cross-sectional' in my training, and maps a situation at one instant in time for part only of the population of relevance. This survey type is different to a 'longitudinal' survey that maps events over time. The eminent whistleblower studies in Australia undertaken prior to the time of WWTW (principally Jan & de Maria at University of Queensland, and the internal study by the NSW Police of its workforce), had used longitudinal studies to gain data and make deductions about the links between a

whistleblower's disclosure and any subsequent retaliation, including the loss of employment by formal act or by informal bullying.

The flaw, not the 'limitation' in our view, of the cross-sectional method used by WWTW is best related in the joke about tobacco company funded research into the effects of smoking - get some smokers in a room, survey them, with questions that include the Yes/No question, 'Did you die from smoking?' The nil result from the survey is then used as proof that 'No one dies from smoking!' That 'output' from the study of this type is in reality an input to the research - namely, exclude dead smokers from the research - and the purported 'discovery' from the cross-sectional survey of this 'output' is simply social science theatre and a silliness that brings humour to the joke.

The WWTW may have used this methodology to arrive at a well publicised conclusion that blowing the whistle seldom leads to loss of employment - bad treatment of whistleblowers was a 'myth', it was claimed. The Steering Committee appears to have decided for the principal survey exercise to conduct research into whistleblowing with a restriction not to survey any whistleblowers who had lost their job after they made their disclosure. It is true that at some parts of the WWTW reporting, the flaw in the study for excluding whistleblowers who had lost their employment was acknowledged as a limitation, and these parts demonstrate that the flaw was understood. There thus appears to be no excuse for other parts of the reporting where the claim of discoveries about the low levels of retaliation recorded in the survey was still made. These latter statements were the ones that appeared to be preferred by the members of the Steering Committee and by their publicists.

The one circumstance that does allow cross-sectional surveys to be used in these examples is, respectively, if the steering committee or the researcher make the assumption that smoking does not kill, and that reprisal sackings against whistleblowers do not happen. In this circumstance, for each of the examples, the outcome of the research has been determined by the assumption made before the research has begun.

That may be the principal issue with the WWTW. In nature, this issue may still be of concern to any Key Centre on Ethics, Law, Justice and Governance such as you directed at Griffith University, but in this instance the issue may not be about Governance. In this case the issue may be about what ethically can be claimed as a 'discovery' of the research when the research, under a Steering Committee, does not make inquiry where the critical facts are most likely to be found. The phenomenon, when it is found in the practice of law, is termed 'wilful blindness'. To dismiss sacked whistleblowers from the survey because they might not be dispassionate, if this is what the steering committee or the researchers did, is a rationale for omitting this group of whistleblowers from the WWTW study that merits disclosure to and discussion amongst the community of whistleblower researchers, WAGQ contends.

A full discussion amongst whistleblower researchers on this aspect of WWTW, and how the WWTW report was used by the watchdog authorities that were steering the WWTW, might lead to research guidelines that vetoed the 'tobacco company' research motif when researching the effects over time of making public interest disclosures. This is another example as to how our presentation critiquing WWTW could be turned readily towards setting a code of conduct for whistleblower research.

Other majors in our list of discussion points regarding the WWTW that could also be generalised into guidelines for whistleblower research, include:

1. the assumption that all government agencies were well intentioned towards whistleblowers, rather than ill-intentioned, after the whistleblowers made their disclosures;
2. the treatment of the major whistleblower cases by watchdog authorities in both their home watchdog role and also in their joint role on the steering committee of WWTW;
3. the independence of the steering committee with respect to the outcome of such research, and of the research universities with respect to the organisations on the steering committee.

I am hoping for further response from yourself or your colleagues, and for you to take up our offer of a presentation at your university

Regards

Greg McMahon
President
WAGQ

FOURTH MESSAGE P MAZEROLLE

On Sat, Jun 13, 2015 at 8:14 AM, Paul Mazerolle <p.mazerolle@griffith.edu.au> wrote:
Dear Greg

I think you have made your point, which I fully understand. It is not productive to further this dialogue in this way. Again, good luck with your research.

Regards,

Paul

Professor Paul Mazerolle
Pro Vice Chancellor (Arts, Education and Law)
Griffith University
Brisbane, Queensland, Australia 4111
Tel: 07 3735 5710 or 3735 5711
Fax: 07 3735 5717
Email: p.mazerolle@griffith.edu.au

FIFTH MESSAGE - A BROWN

From: A J Brown

Sent: Saturday, June 13, 2015 1:45 PM

To: Greg McMahon ; Pam Swepson

Cc: Paul Mazerolle ; Paul Latimer ; Peter Bowden ; Richard Moberly ; Rodney Smith ; Richard Wortley ; david lewis ; Wim Vandekerckhove ; Anna Myers ; Beatrice Edwards ; brian martin ; markworth ; paul harpur ; Peter Roberts ; Rachelle Bosua ; Anja Osterhaus ; Ashley Bressette-Martinez ; Cathy James ; Eva Tsahuridu ; Janos Bertok ; John Devitt ; Marcia Miceli ; Near, Janet P. ; suelette dreyfuss

Subject: Re: GETTING AN INTERNATIONAL VOICE FOR WHISTLEBLOWERS IN AUSTRALIA

Dear Greg

I trust you are well. Sorry for not replying earlier, but as you know we have been over most of these issues before.

Further to Paul's email, there are a couple of points that I didn't want to leave unremarked upon. I'm not copying everyone you emailed, just particular colleagues who may like to know I am not ignoring these additional points. Of course you're welcome to also pass this email on to whoever you like, although you should probably consider whether bombarding people with emails like those ones is actually helping you communicate anything constructively.

First, I am not aware that any of the researchers involved in WWTW have ever claimed, contrary to one statement in your emails, that bad treatment of whistleblowers was/is a 'myth'. That would be preposterous, as is that particular statement of yours, since our results and findings detail enormous evidence of the bad treatment and detrimental outcomes suffered by many whistleblowers -- in some respects consistently with other studies, in some respects differently. Whatever your criticisms of the methods or findings of any research project, I don't think you should be surprised by anyone not being enthusiastic about giving you a conference or other platform, if you are going to make such gross misrepresentations of this project, or any other project. As you know I've been always happy to listen to fair criticisms of both methods and findings, and to engage with those, but I don't think you're doing yourself any favours by carrying on in that particular way.

Second, with respect to your advice that Pam Swepson was 'turned away' by the WWTW project on the basis that we weren't interested in whistleblowers who had been sacked -- I view that as massively incorrect but I'm more than happy to hear from Pam or anyone else as to exactly what they were told if they did approach our project with potentially relevant information or experiences. Of course we would be talking about 2006-2008 or thereabouts. If she approached myself or any of the research team or staff, then our response would/should have been to ask her which organisation she was or had been employed by, in order to check if it was one of our 15 case study organisations. If it was, we would definitely have seen if her case fitted within the project parameters; if not, we would have explained that because this was a systematic study, the organisation(s) involved were outside those particular parameters, for purposes of our surveys, interviews and analysis, which was focused on the lessons and experience from those organisations.

Just to confirm this, you should note that contrary to your claim that we turned such potential participants away, our 'internal witness' and other case study organisation surveys did include people who had been sacked or suspended. You can see this on Table 5.13 on p.129 of our 2008 book, where 5.6% of the 141 whistleblowers in that survey said they had experienced being sacked (rising to 8.2% of all those whistleblowers who said they had been treated badly by anyone); and 5.3% of the 225 managers and casehandlers from those organisations also said they believed that type of reprisal (being 'sacked') had occurred at least once in cases with which they had direct experience. It was different with the wider employee survey which was always going to be limited to current employees, with all the strengths and weaknesses of that approach, but we were at least able to get a bit deeper with the case study organisations. Anyway the implications of all that are discussed in our findings.

I'm not pointing this out with the intention of continuing the debate on things that don't advance anyone or anything. But I'd be grateful if you could desist from the claim that we turned relevant cases away; and also, like I say, if Pam or anyone else got contrary advice regarding the research back when it was being conducted, then I would be keen to hear about the details. Even if it was just a misunderstanding, it would be good to know who specifically she approached and what she was told, especially if there was any record of it, since we obviously see it as vitally important to get these things right.

best wishes

AJ

Dr A J Brown

Professor of Public Policy & Law

Program Leader, Public Integrity & Anti-Corruption

Centre for Governance & Public Policy, Griffith University, Nathan QLD 4111 Australia

T +61 (0)7 3735 3986 M +61 (0)414 782 331 E A.J.Brown@griffith.edu.au

<http://www.griffith.edu.au/business-government/centre-governance-public-policy>

Non-executive Director, Transparency International Australia

<http://www.transparency.org.au>

Now available: A J Brown, David Lewis, Richard Moberly & Wim Vandekerckhove (eds), *International Handbook on Whistleblowing Research* Edward Elgar, 2014

SIXTH MESSAGE - G McMAHON

Dear Professor Paul Mazerolle,

I only write to you again because, at your suggestion, Professor Brown has joined the exchange offering views and suggestions that merit a response.

WAGQ greatly appreciates the exchanges with the researchers, and we suggest with respect that the views that we express be attributed to WAGQ, in the same way that WAGQ is directing its criticisms to the WWTW study and to the body responsible for the conduct of the study, namely, the WWTW steering committee. WAGQ cannot know the dynamics of who directed what during the WWTW, so we have not explicitly directed criticism at the researchers or any one or group of the researchers. For example, we understand that the terms of reference for the research may have included “a given” from the steering committee, namely, that the watchdog authorities had been meeting their responsibilities regarding whistleblowers and their disclosures - the host for the first meeting of the steering committee, CMC chair Needham, declared at the beginning of the WWTW that other research titled ‘Speaking Up’ had shown “...**that investigating authorities can and do take internal disclosures seriously**” (CMC 2005: Media Release, *Whistleblowers being heard ... but are they being protected*, Crime and Misconduct Commission, 16 February 2005)

WAGQ here is holding the steering committee accountable for the flaws that, in the collective view of whistleblowers, existed in the WWTW project and affected its outcome. WAGQ has not here directed any criticism at the researchers, individually or in groups.

Comments from the Research Team.

WAGQ has received from the researcher team, through its leader, Professor Brown, the following statements:

First, I am not aware that any of the researchers involved in WWTW have ever claimed, contrary to one statement in your emails, that bad treatment of whistleblowers was/is a 'myth'. That would be preposterous, [– let me call this the ‘myth’ matter]

Second, with respect to your advice that Pam Swepson was 'turned away' by the WWTW project on the basis that we weren't interested in whistleblowers who had been sacked -- I view that as massively incorrect It was different with the wider employee survey which was always going to be limited to current employees, with all the strengths and weaknesses of that approach, ... (underlining added) [– let me call this the ‘terminated whistleblower’ matter]

Can I recall what was put to you a few days ago by myself addressing the ‘myth’ and the ‘terminated whistleblower’ matters:

The WWTW may have used this methodology to arrive at a well publicised conclusion that blowing the whistle seldom leads to loss of employment - bad treatment of whistleblowers was a 'myth', it was claimed. The Steering Committee appears to have decided for the principal survey exercise to conduct research into whistleblowing with a restriction not to survey any whistleblowers who had lost their job after they made their disclosure. It is true that at some parts of the WWTW reporting, the flaw in the study for excluding whistleblowers who had lost their employment was acknowledged as a limitation, and these parts demonstrate that the flaw was understood. There thus appears to be no excuse for other parts of the reporting where the claim of discoveries about the low levels of retaliation recorded in the survey was still made. These latter statements were the ones

that appeared to be preferred by the members of the Steering Committee and by their publicists.

I submit that, fairly, WAGQ's critique here is about the Steering Committee, the wider employee survey, the reporting on the study and the media releases from the members of the Steering Committee.

The 'myth' Matter

The expression at issue came from a media release by the chair of the steering committee, the CMC, and was justified by the CMC by referring to a presentation by a researcher who used the 22% bad treatment statistic derived by WWTW from the '**wider employee survey**' that was limited to current employees, and thus by definition excluded '**terminated whistleblowers**'. The title and introduction of the media release follows:

New research busts whistleblower bad treatment myth - 24.10.2007 [fm CMC media releases - 2005 - 2010]

The age-old adage of most public sector whistleblowers being shunned and tormented by their peers has been disproved, according to the results of a major national study released today at the first Australian Public Sector Anti-Corruption (APSAC) Conference in Sydney.

Delivering findings from the Australian Research Council-funded Whistling While They Work project, Griffith Law School Senior Research Fellow and project leader Dr AJ Brown said only 22 per cent of the whistleblowers surveyed said they were treated badly by management or co-workers, with 78 per cent reporting they were treated either well or the same by management and co-workers.

WAGQ, in its presentation on the WWTW Project, attributes the statement to the CMC. It is the statement by the CMC, not by WAGQ, that links the '**myth**' matter back to the '**wider employee survey**' which the research team admit above was limited to current employees. WAGQ's criticism is that the 22% bad treatment figure should not have been published, as it was flawed by the use of a cross sectional analysis for a time based phenomenon – the links between disclosure and retaliation – that a cross sectional analysis cannot in good practice capture, in our view.

Other sections of the WWTW Report, and again we hold the steering committee accountable, contributed to the '**myth**' matter:

1. The description of the principal whistleblower cases in Queensland as '**mythical tales ... retold in popular films and books**' (at page 109) – this could be perceived as

attributing the status of a fairy tale or dreamtime story to whistleblower cases such as Jim Leggate, one of the ten so termed 'Senate Whistleblowers', one of the five Australian Whistleblowing Cases of National Significance, and the seminal case in Australian jurisdiction for the study of Regulatory Capture – and

2. The claim, again based on the '**wider employment study**' (at page 129), that reprisals against whistleblowers were '**unlikely to involve a single decisive blow such as a sacking ...**' when whistleblowers who were no longer employees, like Dr Pam Swepson and Jim Leggate, the ones who may have been 'sacked', were excluded from the '**wider employee survey**'. This deduction, stated in the Report, raises our concern about whether such a claim can have any merit as a statistic, and, if not, whether it can be ethically made given its possible impacts on public policy and the workplace health & safety of whistleblowers.

The 'terminated whistleblower' Matter.

The differences, in WAGQ's assessment, between the whistleblower research conducted by Jan & de Maria at the University of Queensland in the nineties, and that steered by the watchdog authorities at Griffith University in the Naughties, is that Jan and de Maria ran a longitudinal study for which participants had to prove that they were whistleblowers to become part of the research, while the watchdogs steered WWTW to a cross sectional survey for which participants self nominated as whistleblowers. The constructive deduction to be made by researchers and policy developers, is that the methodology of Jan & de Maria has more credibility. Future research should avoid the use of cross sectional studies for the link between disclosure and retaliation, and this should be insisted upon by codes and guidelines for whistleblower research, again, in WAGQ's view.

The above represents the standard of research and care that WAGQ has brought to ensure balance and fairness in its criticisms of the WWTW, many of which have not been addressed in these exchanges. We seek your agreement to a presentation at your University. In our view, it is your University that is in best position to overcome or mitigate the disadvantages that have been brought upon whistleblowers in Australia by the watchdog authorities that have been using the flaws in the subject research.

Regards

Greg McMahon
President