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

The Whistle

NO. 58, APRIL 2009

Newsletter of Whistleblowers Australia

Radiotherapy underdosing at Royal Adelaide Hospital: see page 12

Media watch

Vietnam whistleblower suffers for war on graft

Ben Stocking
Associated Press, 28 December 2008

THE THUGS came after dark, as Do Viet Khoa and his family were getting ready for bed.

He says they punched him, kicked him, stole his camera and terrified his wife and children.

Khoa, a high school maths and geography teacher, thinks the message was clear: stop blowing the whistle on school corruption — or else.

For several years, Khoa has been fighting the petty bribery and cheating that plagues schools across Vietnam, where poorly paid teachers and administrators squeeze money out of even poorer parents.

Vietnam's leaders approved a sweeping anti-corruption law in 2005, but implementation is uneven. The country still ranks poorly on global corruption surveys, and for ordinary Vietnamese, who treasure education, school corruption is perhaps the most infuriating of all.

Few dare to fight it, for fear of retaliation.

A slight, ordinary-looking man from a farming village, 40-year-old Khoa made a dramatic entrance onto the national scene two years ago. He videotaped students cheating on their high school graduation exams while their teachers watched and did nothing. State-owned TV stations played the tape repeatedly.

With TV cameras in tow, Vietnam's education minister went to Khoa's house to hand him a certificate praising his courage. Khoa appeared on Vietnam's version of the Larry King show. The principal of the Van Tao High School, where Khoa has taught since 2000, was transferred.

But back in his farming village of Van Hoa, about 15 miles (24 kilometers) outside Hanoi, Khoa got anything but a hero's welcome.

Teachers and administrators resented the unflattering spotlight. Even among parents and students, who stood to gain most from Khoa's efforts, few came to his defence.

All the parents wanted was to get their children through school and into jobs, even if they had to cheat to pass their exams, Khoa said.

"The entire community has shunned me," Khoa said. "They harass me on the phone, they send me letters. They say I put my thirst for fame ahead of their children's welfare. Some of them even threatened to kill me."

Thinh Van Nam, 27, a teacher at the school, thinks Khoa has brought his problems on himself.

"Khoa says we isolated him, but it is not true," Nam said. "When someone feels ostracized by his peers, he needs to ask himself why."

Matters escalated last month, when the four men came to Khoa's house — two of them guards at his school, according to news reports. Police are still investigating.

Khoa has also run afoul of the new principal, Le Xuan Trung, after sending a letter to national and local officials alleging that Trung imposed various unfair fees to enrich school staff at parents' expense.

One of Khoa's biggest complaints is the "extra classes" implemented at his school and others across the country, in which regular school teachers tutor students for money.

"If they don't go, the teachers give them bad grades," said Khoa.

A teacher can triple a salary by packing students into the sessions. These cost parents about $6 a week — nearly as much as they earn farming rice.

Principal Trung did not respond to an interview request. But he was quoted in the *People's Police* newspaper as saying enrolment in the classes is voluntary.

Trung reportedly said Khoa "did not always concentrate on his teaching and follow the school regulations," and "he used his camera and recorder too much, so people did not feel comfortable talking to him."

One man defending the teacher is Vu Van Thuc, whose son goes to the school. "He is really brave," said Giang Xuan Dung, a maths teacher. "I admire him for his courage and patience."

Other schools have offered to hire Khoa.

"I thought we should support him," said Van Nhu Cuong, a Hanoi headmaster who tried to hire him. "We really need people who dare to speak out."

Khoa refused because the school is too far from his home.

His wife, Nguyen Thi Nga, worries about her husband's crusade.

"This has caused us a lot of stress," she said. "I wish everyone would join the fight against corruption so that we wouldn't be the odd ones out."

No matter what happens, Khoa said, he won't stop fighting to uphold the ideals of honesty and integrity promoted by the communist revolutionaries who freed Vietnam from colonial rule.

"Many teachers are soiling the image of education," he said. "Corruption is a betrayal of communist ideology and of the country."

U.S. businesses in Hungary want whistleblower law

Richard Renner
http://www.whistleblowers.org/
2 January 2009

"WHISTLE-BLOWER legislation brings in a lot of money," proclaims the headline in *Business Hungary* magazine. The article in November's issue reports on a trip to Hungary by Stephen M. Kohn, President of the National Whistleblower Center.

Stephen Kohn traveled to Hungary last fall to urge Hungarian officials to adopt a whistleblower law similar to America's False Claims Act (FCA). Under the FCA, those whistleblowers who are the original source of information leading to the recovery of federal funds fraudulently obtained can recover between 15% and 30% of those funds. Since a 1987 amendment, FCA claims have helped taxpayers here [in the US] reclaim $20 billion.

To help us make these recoveries, the whistleblowers faced discharge, financial ruin or worse. Even whistleblowers who are not the "original source" of information are still protected from retaliation.

More significant than the money recovered, the FCA compels business to stay honest with the government — cleaning up entire industries. No wonder, then, that Hungary's Minister of Justice, Tibor Draskovics, announced plans for a similar law in Hungary. A recent Transparency International report also recommended whistleblower protection legislation as a way to deter corruption.

The Hungarian branch of the Chamber of Commerce recognizes how whistleblower remedies, and even cash awards, will encourage reports of wrongdoing and help honest businesses compete. I wonder, though, why honest American businesses are not promoting the FCA here in their homeland. The FCA routs out the dishonest operators here too, and levels the playing field for honest businesspeople everywhere. It would be logical, then, if these same American businesses would support the False Claims Corrections Act when it is reintroduced in the new Congress.

They make a brave stand for justice but who will give a job to a whistleblower?

Lisa Buckingham and Jon Rees
Additional reporting by Ollie Joy
Mail Online (UK), 14 February 2009

HE THOUGHT it would be a nice little part-time job to help pay his way through PhD studies at University College London. But when Bob Winsor began working as a call centre operator for Big Game TV, which made programmes for broadcasters including ITV, it did not take him long to suspect that all was not well.

Viewers were, he believed, being fleeced on premium-rate phone lines and when his bosses dismissed his concerns, Winsor blew the whistle to industry watchdog Ofcom. He triggered what was eventually to snowball into a full-blown scandal engulfing top-rated programmes such as the *X Factor, Richard and Judy* — and even *Blue Peter.*

But instead of being feted as a hero for trying to expose what he believed to be a massive fraud on the public, four years later he still has not worked and fears for his future. "Who's going to employ a whistleblower?" he asked.

And that is exactly the question being asked at the very highest levels of business and Government. The case of Winsor — and that of Paul Moore, who last week went public with allegations about HBOS — show that the Public Interest Disclosure Act is little better than a shield of tissue paper against mistreatment.

Moore was sacked when he tried to raise risk management failures with the board, though his submission to the Treasury Select Committee last week precipitated the resignation of his former boss, Sir James Crosby, from his new role as a City regulator.

Possible criminal cover-ups in the credit crunch, scandals such as Madoff in the US, rampant insider dealing and a growing public imperative to find those responsible, have convinced regulators that they need to encourage whistleblowers.

Criminals, they have decided, will not be caught unless someone informs on them. But though the Serious Fraud Office, which has a chequered reputation for prosecution, says it has about five cases under way that were the result of whistleblowing, the experience of those who make a public stand for corporate justice is not encouraging.

One of the highest-profile frauds in recent City [of London] history was sparked by an unlikely whistleblower — the company's own chief executive.

Neil Mitchell was the youthful boss of Torex Retail, which provided software for retailers. In January 2007, just four months after joining, he went to the Serious Fraud Office to make allegations of a sophisticated scam.

That investigation is still going on and the stress has clearly taken its toll on Mitchell's nerves. He claims to have been followed by "military types" who chased him through an underpass in central London. Friends say a home in Oxfordshire was mysteriously burgled and it is thought Mitchell may have resorted to living abroad.

Harry Markopolos, who first reported suspicions of Bernie Madoff's potential £35 billion Ponzi fraud in the US, has also said that he is in fear for his life.

Legal protection for whistleblowers who might implicate themselves is about to be extended to those making reports to Business Secretary Lord Mandelson's department and the Financial Services Authority, allowing them to offer immunity from prosecution rather in the way that Sir Richard Branson's Virgin group dodged being fined for fixing fuel surcharges by ratting on its co-conspirator, British Airways.

David Donnelly blew the whistle on an accounting fraud at water group Severn Trent by going to *Financial Mail.* This eventually prompted a complete boardroom shake-out, multi-million pound fines and an SFO investigation. He believes self-protection is not the only issue.

Donnelly said: "I had tinkered with the data on the instructions of my bosses. The penny dropped. I grappled with the fact that I was party to a huge fraud.

"I felt desperate. I knew what was going on was wrong, but with children in university and a mortgage to pay I could see no way of simply resigning." Donnelly's requests for a transfer were frustrated repeatedly and though the company finally gave in, his faith was broken, his health was suffering and he finally went to the Press. In the end he secured a pay-off, but he had spent months on sick leave and is thought not to have worked again.

Cary Cooper, professor of organisational psychology and health at Lancaster University, said: "Individuals begin to question their own judgment and interrogate themselves as to why they felt the need to give up job or status. They lose the ability to rationalise the situation. They can experience rejection — either by being sacked or marginalised — and are often labelled untrustworthy.

"And, partly because of a difference in the financial firepower of a company and an individual, they worry about being able to prove the allegations as it can be a very long drawn out process to prove accuracy."

Risk managers such as Moore are being given more senior roles within

companies. And John Hurrell, chief executive of the risk managers' trade organisation Airmic, said: "The HBOS case was a terrific — but by no means unique — example of a company pursuing a strategy of exceptional profit with too little regard of the risks it was running."

There is also a suggestion that the business world should copy an idea from the Government's Joint Intelligence Committee of creating the role of devil's advocate to challenge strategy and corporate behaviour as well as acting as a channel for staff reports.

But one middle-ranking executive, who was an early whistleblower in one of the frauds to hit the Lloyd's insurance market in the late Eighties and early Nineties, told *Financial Mail*: "It really doesn't matter what they say about a culture of openness, no big corporation wants to hear from a whistleblower."

Now fearful that he will never receive a proper hearing from the regulator, Winsor said: "Whistleblowers need more protection. You are at the mercy of the regulator if they are protecting the industry they are meant to regulate.

"I'm sure Ofcom would have received other complaints about those shows. There must have been other whistleblowers. But I'm the one who now looks like a troublemaker."

Speaking out at M&S

Tony Goode had worked for Marks & Spencer for 25 years and was earning £40,000 a year when he contacted a newspaper because he felt staff were being steamrollered into accepting new redundancy terms. Three days later he was dismissed from his job as a customer loyalty manager.

"I may have been naive in the way I did it, but I genuinely believe I did the right thing," said Goode, a single parent with two children. "I believe they over-reacted. You would have thought I'd attempted to murder Stuart Rose."

Goode accused managers of monitoring his private phone calls, though this was dismissed as "utter nonsense."

"The thing that irked M&S management was that I made some comments about lions being led by donkeys," he said.

"They had already decided they were going to dismiss me before I was called to the meeting that day. My line manager's parting words were, 'Your 25 years count for nothing'."

"Ex-colleagues have been told not to speak to me. It's like I have been sent to Siberia."

"I've had interviews for jobs and I want to be upfront, but when I revealed the M&S circumstances, they went cold. It will be difficult to get a similar job in retail now."

Goode is working on a six-month contract for the GMB union and is preparing for an employment tribunal over his sacking in May.

HBOS whistleblower urges fellow believers to speak out

Christopher Lamb
The Tablet, 21 February 2009, p. 42

PAUL MOORE, the former chief risk manager at HBOS who blew the whistle on the bank's risk-taking culture, has said his Catholic faith was key to his decision to speak out.

Mr Moore, who was educated at the Catholic public school, Ampleforth, in North Yorkshire, and now lives near the Benedictine monastery, said his conscience compelled him to contact the Treasury Select Committee with his evidence.

"It was almost as if I was thrown a challenge by God: 'It's time to witness'," he said of the moment he learnt that the former HBOS chief executive Lord Stevenson and former chairman Andy Hornby were to be interviewed by the committee. The following day, 4 February, he phoned the committee and offered to submit his written evidence for their meeting last week.

Mr Moore told *The Tablet* that he believed there were "hundreds and thousands" of other people in the banking and finance industry who are wanting to speak out.

"I would say to them ring me up and I will talk to you personally. I am willing to set up a helpline to help people," he said. "Although I'm not going to force anyone to do anything, I will only encourage them to follow their conscience. But as Joyce Meyer said: 'You don't defeat Goliath with your mouth shut'."

The 50-year-old former barrister added that he had recently been contacted by Anthony Smith, a Christian and former HBOS manager who spoke out about the bank's irresponsibility on Tuesday.

Mr Moore, who describes himself as an "ordinary" Catholic, said it was important for others to feel they could make a stand.

Mr Moore was sacked in 2005; in his evidence to the Select Committee he said he was fired by Sir James Crosby for arguing that the bank was taking too many risks. Sir James went on to become vice chairman of the Financial Services Authority and resigned last week after Mr Moore's evidence.

Mr Moore said he struggled for months over whether to come out with his evidence. "I didn't want it in any way to be seen as revenge, nor did I want to harm anyone," he said. "I honestly don't have anything against these people."

Mr Moore, a trustee of XT3, a Catholic social networking website, said he rediscovered his faith after leaving HBOS and moving to Yorkshire.

When courage is encouraged on the job

G Jeffrey MacDonald
Christian Science Monitor,
26 January 2009, p. 13

IN BUSINESS, the difference between a fixable mistake and an irreparable disaster sometimes hinges on whether employees dare to take a stand before habits of wrongdoing become ingrained.

Now experts are casting fresh light on which factors seem to motivate courageous behavior in the workplace. As it turns out, hiring heroes may not be as important as emboldening current employees to raise objections when things don't seem right.

In research published last year, for instance, scholar Janet Near found federal workers privy to wrongdoing were more apt to become "whistleblowers" (reporters of wrongful practices) when they knew exactly where

to go with allegations. They also came forward when they believed colleagues would support them and when they didn't have to confront a supervisor face to face.

In short, ordinary people acted proactively as long as particular circumstances were in place.

Whether someone comes forward "is not so much based on personality or anything that's unique to them," says Dr. Near, an Indiana University management professor and coauthor of *Whistleblowing in Organizations.* "Instead, they blow the whistle if: the wrongdoing they have observed is serious; they feel that telling somebody about it will actually make a difference, and they feel they're going to get some support in the organization for doing that."

But fostering workplace courage still remains a challenge. Example: In December, German electronics giant Siemens agreed to pay the largest bribery fine in corporate history (US$1.6 billion) after investigators exposed a culture bent on feeding kickbacks to officials around the world. Also last year, bond ratings agencies in the United States admitted to having turned a blind eye to conflicts of interest when lucrative deals were on the line.

In those cases and others, workers kept mum as damaging corporate policies became entrenched. But experts say good management can create conditions to encourage moral stands.

In 2004, Emory University organizational psychologist Monica Worline analyzed 650 narrative accounts of on-the-job courage in high technology companies. Most employees described courageous acts performed by others (not themselves), Dr. Worline says. Yet when managers welcomed challenges from employees as opportunities to make improvements, even silent onlookers grew bolder over time to voice their own protests on the job.

"Being exposed to someone who does those kinds of [courageous] activities actually changes the viewpoint of the person who experiences it," she says. "Over time, that observer becomes more likely to do similar actions."

Still, managerial style isn't all that matters in fostering courage, Worline says. Motives matter, too. Her research suggests "people who deeply believe in what their organization is trying to accomplish seem to be much more willing to take risks on its behalf."

Others find courageous action becomes more likely when organizations regard particular values as more important than always maximizing short-term profits. But not just any values will do.

"In a lot of organizations, the set of values that they describe [and] aspire to will be words like 'innovation,' 'dynamism,' 'excitement' or something like that," says Rushworth Kidder, a former *Monitor* columnist and founder and president of the Institute for Global Ethics in Rockland, Maine. "Organizations need to understand that the core moral values have got to be higher than that. … They really need to be articulating that set of principles that somebody literally could die for, or be willing to die in terms of their own career." Among the higher values he suggests: honesty, respect, and compassion.

Ottawa management consultant Cornelius von Baeyer, who specializes in creating ethical workplaces, agrees it's not effective simply "to put up a sticky note to say, 'we believe in integrity'." Instead, he urges managers to explain via case studies, training sessions, and newsletters how exactly a value such as integrity or compassion ought to be expressed in their respective industries. Then workers are more likely to take principled stands because they won't need to hesitate or wonder how to live out their values.

The bane of workplace courage, experts say, is intense pressure to deliver short-term results. When quarterly numbers become supremely important, Mr. Kidder says, then workers must sometimes choose between doing what's right in a workplace situation and protecting the career that puts food on the table at home. A better way, he says, is to prevent such dilemmas by empowering workers to prioritize long-term results — and say "no," when necessary, to potential short-term gains.

Scholars add that one of the best ways to reap the fruits of ethical workplace behavior is to reduce the need for courage. When bosses welcome challenges, for instance, the danger involved in raising questions about right and wrong business practice is diminished. When risk is reduced, so also is the need for courage.

But unless workers feel that their actions matter, inaction in the face of wrongdoing is likely to persist.

"When you ask employees who have observed wrongdoing why they don't blow the whistle, what they tell you is not that they're worried about possible retaliation," Near says. "It's that they're pretty sure their organization isn't going to listen to them."

Reform plan could revolutionise attitudes to whistleblowing

AJ Brown
The Australian,
27 February 2009, pp. 27-28

WHEN the Rudd Government set out to implement its election commitment to introduce "best practice legislation" to encourage and protect public sector whistleblowing, it was always going to face challenges.

AJ Brown

Asking the House of Representatives Legal and Constitutional Affairs Committee to inquire into how best to do it was a good way to sort those challenges.

It was also a good way to establish whether reforms aimed at greater openness and accountability in gov-

ernment would get the type of bipartisan support they deserve.

The unanimous report of the committee, chaired by Labor MP Mark Dreyfus QC but including a number of strong Opposition figures such as former immigration minister Kevin Andrews, shows that the public should be able to expect bipartisan support.

Achieving effective whistleblowing legislation is notoriously complex, and this is one of the major reasons it has eluded the commonwealth Government and many states and territories for so long.

Few areas of reform bring together such difficult issues of public sector management, accountability, workplace rights, public servants' duties, freedom of speech, privacy, the need to flush out wrongdoing or breakdowns in public administration — and the frequent need for confidentiality in how government information is handled.

A major breakthrough in the legislation proposed by the Dreyfus committee is that it would put in place a framework for ensuring that a pro-disclosure culture is achieved in every federal agency — rather than relying on legislation to try to protect individual damaged whistleblowers after the Government gets it wrong.

This philosophy, if followed in the detail of the legislation, will help revolutionise the current approach.

Our research in the Whistling While They Work project, funded by the Australian Research Council, showed that for every public interest whistleblower who occasionally appears as a hero on the front page, there are many thousands more about whom Australian voters and taxpayers never get to hear.

It may be a special part of our public sector culture that government employees are prepared to speak up about wrongdoing — but it is not rare. Unfortunately, though, public officials who speak up still often come off second-best in the process, in terms of stress, neglect and adverse treatment from their own managers, often even when their disclosures are listened to and acted upon.

Among the comprehensive treatment that the committee has given to these problems, three proposals stand out as particularly strong.

The first is that the coverage of the legislation should be broad, in terms of which public officials, public contractors and others will get the support of whistleblowing schemes. If in doubt, every person who works directly — and often indirectly — in Australian government programs will be covered.

There is even a good proposal that those administering the act be able to "deem" people to be public officials under the act, if they are working on the margins of government and there is any doubt as to their status.

A second strength is a suite of new obligations on senior public sector managers, to the highest levels of government, to act on internal disclosures and better support those officials who make them — including explicit requirements to assess the risks of adverse action that could befall whistleblowers — and manage those risks rather than leaving their welfare to chance.

A third strength is a plan for strong external oversight, by the Commonwealth Ombudsman and the Workplace Ombudsman, to ensure that internal disclosure systems are up to scratch and that whistleblowers are not being left as collateral damage.

For the first time in the federal public sector, it will be clear that public servants can and should go straight to the Ombudsman and other integrity agencies if they do not have confidence in their own agency's response. Rather than feeling they are breaking the rules, going outside will be recognised as an act of loyalty to the true mission of their own department, and the broader public interest.

There are also some challenges ahead in exactly how the proposed legislation is going to look when drafted. The first of these potential problems goes with the challenge of breaking new ground.

When despite best efforts it still goes bad for internal whistleblowers, we know that criminal prosecutions rarely succeed against any staff or managers who undertake reprisals. We also know that no existing mechanism for providing compensation is very effective. The committee is proposing to make justice for aggrieved whistleblowers a strong part of the new "Fair Work" system of workplace rights. This is a good plan, but one that needs to be backed up with strong enforcement.

A second challenge is the committee's recommendation that while almost any type of wrongdoing or defective administration will be covered, in all instances they will need to be "serious matters." The question of who decides what is "serious" could have a large impact on determining the effectiveness of the legislation.

Third, the Dreyfus report recommends that the federal Government become the second Australian jurisdiction to extend legal protection to whistleblowers who go to the media — at least sometimes. NSW public servants already have some limited protection in this respect.

The federal proposal is that public whistleblowing only be protected where used as a last resort — after first trying internal channels, and the Ombudsman, without success.

In most circumstances this restriction makes sense. The majority of public servants who speak up about wrongdoing just want things fixed. They usually have no great desire to see the issue, or themselves, splashed across the front page. However, the committee has suggested that the only matters that public servants can ever be justified in taking public are ones involving "serious immediate harm to public health and safety."

Major fraud or corruption, or major abuses of power such as the wrongful imprisonment of citizens in government detention, would be just some of the types of wrongdoing left out of this part of the scheme.

Even if the Ombudsman had looked at the problem and failed to act, or got it wrong, a public servant who justifiably went public could still be sacked, sued or prosecuted. Many of the principles discussed by the committee are right, but on this issue the final result will need to operate more broadly if the Government's promise to introduce "best practice" legislation is going to be met.

Even Britain — the home of official secrets and *Yes Minister* — includes all types of alleged wrongdoing in its third-party whistleblower protection.

The Dreyfus report provides a good road map for a comprehensive scheme of public sector whistleblower protec-

tion. The parliament should move on all of it, and by following the logic and spirit of the report as a whole should also be able to find solutions to special challenges such as these.

If it succeeds, the result should be a major step towards a new era of responsible government and strengthened public accountability.

Dr A. J. Brown, professor of public law at Griffith Law School, Griffith University, led a national research project on public sector whistleblowing (www.griffith.edu.au/whistleblowing).

Blueprint for silence on official wrongdoing

Bill De Maria
The Australian, 2 March 2009

FOR the women and men of conscience in the Australian public service, February 25 will be noted despondently as a day when their parliamentary representatives again failed to step up to the plate and protect people who wish to disclose official wrongdoing. On this day a parliamentary committee published its report on new commonwealth whistleblowing proposals that will proceed languidly to parliament for consideration.

Bill De Maria

This is the third time in the past 15 years that a national government committee has tried to hold the burning coals of whistleblower protection. But this committee report cries "ouch!" the loudest. It is mean and narrow in its vision, embarrassingly conservative in its proposals and will do nothing more then send commonwealth whistleblowers, like lab rats, into management-controlled bureaucratic mazes.

What are the deep problems that make these official efforts to protect Australians who wish to speak truth to power so wantonly incompetent? For a start, the recommendations are not alive to the fact that people in Australia are dead scared to report wrongdoing, notwithstanding the fact that whistleblower legislation has been on state statute books in Australia since 1993. On the international level a new PricewaterhouseCoopers study found that only 8 per cent of surveyed companies attributed fraud detection to their whistleblower systems (up from 3 per cent in 2005). This was only slightly higher than fraud detected by accident.

Very low disclosure figures are also found in our state corruption fighters. In 2007-08 only 74 verifiable public interest allegations under the Queensland Whistleblower Protection Act 1994 were processed by the Crime and Misconduct Commission and Queensland public sector agencies. Whistleblowing in the West Australian public service is also a low-level activity three years after the Public Interest Disclosure Act 2003 was enacted. In 2006-07 only 13 people made protected disclosures to public authorities.

These minimalist disclosure statistics from three Australian corruption fighters complement the abundant international research insight into why employees steadfastly avoid making public interest disclosures.

The whistleblower committee that engineered this bland little document simply cannot see that the commonwealth public sector landscape is not one of robust public interest voice but of deep self-protecting silence. And throwing more bureaucracy at them won't change this one iota.

Here are some of the hot coals that this committee couldn't handle. It won't give protection to ordinary members of the public wishing to report instances of commonwealth wrongdoing. What does the committee fear here?

It won't give protection to people fed up with bureaucratic obstruction and harassment who go to the media. The committee says it will give such protection. But like a child on the back step at night, the committee did not venture forth. The only way you will get protection if you go to the media is if the bureaucracy has taken an unreasonable amount of time to process your complaint (whatever that means) and it is a matter of public health or safety. So, unless you know of some bureaucrat pouring bubonic plague into your river, forget about going to the media.

This media embargo is in all whistleblower laws in Australia except the NSW one. Governments are very threatened by journalists properly instructed by whistleblowers with the inside stuff. Thus, when we get another AWB scandal or Haneef-type allegation against the Australian Federal Police, the media will have to continue to rely on backdoor leaks, which seriously hamper this central democratic institution fulfilling its accountability role.

The committee embraced a managerialist-driven model of whistleblowing, against the international research evidence, when other options were available, including a model of whistleblowing as a form of collective public servant dissent.

Only two decades ago whistleblowers were pilloried as loose moral canons creating organisational mayhem and threatening loyalty bonds in the workplace. This is evidenced by the titles of past papers including: "Police who Snitch: Deviant Actors in a Secret Society" and "Whistleblowers: Saint or Snitch?" Now their ethical services are being integrated into management orthodoxy. Whistleblowing is coming in from the cold.

The story of how whistleblowing has emerged as the darling of governments and corporations busy engineering anti-corruption campaigns is an intriguing one. An account of whistleblowing's makeover provides through-the-keyhole insights into one of the most fundamental changes occurring in the workplace, the attack on — if not the slow burn down of — collective forms of workplace dissent. So whistleblowing is what you have when you no longer have a collective voice. The committee shamefully disregards this bigger trend in favour of more of the same.

What went wrong? For a start the committee (Standing Committee on Legal and Constitutional Affairs, to give it its full title) was not only a

backbench committee, it was a very young backbench committee. Half of its members came into parliament at the end of 2007. At the announcement of the inquiry (July 10, 2008) these five (including the chair of the committee, Mark Dreyfus) only had five months' parliamentary experience.

Other than its policy immaturity the committee may well have had serious distractions. For most of the life of the committee, one member, Kevin Andrews, did not know whether he would face improper behaviour findings by the Clarke Inquiry into the case of Dr Mohamed Haneef.

Sophie Mirabella, the member for Indi, was also on the committee. Was the fact that she attended only one out of 10 public hearings of the committee related to the presence on the committee of Belinda Neal, the member for Robertson, who was found by the House of Representative Standing Committee on Privileges to have acted below the standards expected of politicians when she told pregnant Mirabella that her baby would be born "a demon."

The committee could have made a real achievement here. It could have been instructed by successful overseas schemes. It could have lessened its overt reliance on research inputs from a university project that on the researchers' own admission had flaws in the methodology. It could have consulted much more widely in the community. The first parliamentary inquiry into commonwealth whistleblowing in 1994 attracted 102 witnesses and 125 public submissions. This time, the committee had only 71 public submissions and 77 witnesses.

All we can hope for now is that the parliament rises to the occasion and seriously renovates this proposal into a strong response to assist all Australians who care about official integrity.

However, if this proposal released on February 25 becomes law, my advice to commonwealth whistleblowers of the future is to keep your mouth shut.

Dr Bill De Maria lectures at University of Queensland's business school.

State of secrecy

Caroline Overington
The Australian, 24 March 2009, p. 9
[extract, on whistleblower laws]

The whistleblower laws are likely to be informed by the findings of a legal and constitutional affairs committee headed by Mark Dreyfus QC. That committee suggests that whistleblowers first take their concerns to a superior of some kind (and, in the process, probably wreck their career); and, if that doesn't work, they should complain to an external body such as the Commonwealth Ombudsman (a process that is itself likely to be a bureaucratic nightmare, befouled by politics). If — or when — that fails, the whistleblower must wait a reasonable period (whatever that may mean) before taking their concerns to journalists, and then only if the matter concerns "an immediate and serious threat to public health and safety."

According to Dreyfus, these changes would "transform the culture of the public service and protect whistleblowers from reprisals."

In fact, whistleblowers would still have to jump through hoops and lawyers would have a field day trying to decide what constitutes an immediate and serious threat.

This newspaper wonders: would airport security qualify? After all, it was *The Australian* that in 2005 published details from an internal Customs report that revealed lax security and drug-smuggling rings at several airports, leaving the country vulnerable to terrorism. The report had been ignored by internal officials for two years before it eventually was leaked to the newspaper. No journalist was dragged to court but Customs official Allan Kessing was charged, convicted and sentenced to nine months' jail, later suspended. He lost his job and is fighting an appeal, which has cost him his savings, all while protesting his innocence. *The Australian* has never given up its source. Its view is simple: the story was correct and in the public interest, and therefore was published.

University of Queensland business school lecturer Bill De Maria has described the planned reform of whistleblower law as "mean and narrow in its vision" and "embarrassingly conservative in its proposals." "It won't give protection to ordinary members of the public wishing to report instances of commonwealth wrongdoing," he says. "It won't give protection to people fed up with bureaucratic obstruction and harassment who go to the media."

Australian Press Council chairman Ken McKinnon agrees, saying: "The future situation will be hardly better than it is today. Whistleblowers know that their best and quickest chance of rectifying corruption, waste and general governmental incompetence is to go directly to the press."

Overdue whistleblower shields on table

Mark Dreyfus
The Australian, 27 March 2009

BLOWING the whistle, or speaking out against suspected wrongdoing in the workplace, can be a risky course of action.

Whistleblowers often face harassment and threats, have their authority undermined, miss out on promotions and in some cases are forced to leave or are sacked from their positions.

Mark Dreyfus

Last month, I tabled a report of the legal and constitutional affairs committee in the House of Representatives that recommended a comprehensive whistleblowing scheme for the commonwealth public service.

This report, currently being considered by the Government, will lead to the strongest whistleblower protection regime in any Australian jurisdiction.

Despite Australia's very high standards of public administration,

improper conduct and maladministration does occur from time to time. Recent examples include the Australian Wheat Board scandal, the outbreak of equine influenza and the wrongful detention and deportation of Australian citizens by immigration authorities.

This is why the Rudd Government is committed to real reform to better protect people who speak out about wrongdoing in the public service. Legislation in this area is part of a set of integrity reforms that are under way, including Freedom of Information reform and journalist shield laws and codes of conduct for ministers, their staff and lobbyists.

The Rudd Government's action in this area is in sharp contrast to the inaction of the Howard government. Commonwealth legislation in this area is long overdue.

The objective of the proposed scheme is to promote accountability and integrity in government. Public interest disclosures play an important role in promoting integrity in government. Providing protection to whistleblowers will create a system that encourages disclosures of wrongdoing and provides a means for dealing with wrongdoing.

The report recommends a model for disclosure first to the relevant agency, then to an external agency such as the Commonwealth Ombudsman.

This matches current practice and is commonsense. Almost all whistleblowing occurs through internal channels, despite the absence of protection against criminal and civil action.

The committee also recommends that protections for whistleblowers should include immunity from criminal liability, from liability for civil penalties, from civil actions such as defamation and breach of confidence, and from administrative sanction. The right to make a disclosure should also be defined as a workplace right, with recourse to the Commonwealth Workplace Ombudsman. As well, the report recommends protection for disclosure to members of parliament, legal advisers, professional associations and unions for certain purposes, and the media in limited circumstances.

Criticism of the report, which has narrowly focused on protection for disclosure to the media generally misunderstands the purpose of protecting whistleblowers.

It reflects the journalistic instincts of sourcing a story, which may result in a net public benefit, while ensuring their source has protections.

Protections for the media and their sources are rightly the subject of journalist shield laws, legislation for which has recently been introduced into the parliament by the Attorney-General, Robert McClelland.

Government whistleblowing encapsulates a lot more than this. Whistleblowing protections are not just about access to public information. As the NSW Council for Civil Liberties pointed out, "freedom of information laws should ensure that information about (policy) options is made public. That, however, is not the concern of whistleblower protection."

Whistleblowing, by definition, is first and foremost about dedicated and conscientious public servants whose primary motive is to ensure the departments and the agencies in which they work fulfil their duty to the public.

Because of this, the committee recommended that in certain cases, after the matter has been disclosed internally and externally but no action had occurred to remedy the situation, then public interest disclosures to the media should be protected, but decided against recommending the media should be used for first-line disclosures.

As the committee pointed out, there are good reasons for this. Requiring internal disclosure as a first step guards against interference with investigations and ensures natural justice for those against whom complaints are made.

In addition, the media lacks a structured and rigorous system of investigating disclosures. The model for disclosure to the media that the committee chose is similar to that recommended by the Community and Public Sector Union. Interestingly, the coverage of this issue has largely ignored the strong support that has come from the CPSU.

The response to the report from the union whose job is to protect the workplace rights of public servants was unambiguous — the report is "a significant step forward" and "addresses all the elements of an effective whistleblower scheme."

Yet it would be hard to discern this support from the coverage of this issue in the media.

In particular, the article by Caroline Overington in this paper on Tuesday was selective in its use of sources.

Overington's decision to quote the Media Entertainment and Arts Alliance, the union that covers journalists, rather than the CPSU, the union that covers public servants, reflects the journalist's imperative of sourcing stories rather than the wider public interest of assisting dedicated public servants sort out wrongdoing.

Her statement that a complaint to the Commonwealth Ombudsman is "likely to be a bureaucratic nightmare, befouled by politics" misunderstands the independent stature of one of the most highly respected public agencies in the country. The article states that the committee "suggest(s) that whistleblowers first take their concerns to a superior of some kind (and, in the process, probably wreck their career)."

The committee did no such thing. In fact, the committee recommended that the onus is on each agency head to establish public interest disclosure procedures and to report on the use of these procedures to the Commonwealth Ombudsman and, where appropriate, delegate staff within the agency to receive and act on disclosures.

It also recommended a range of other obligations that agencies should be required to meet. The reforms proposed by the legal and constitutional affairs committee are important and go further than legislation already in place in Australian states and territories, and many other countries.

Mark Dreyfus QC MP is the federal member for Isaacs and the chair of the House of Representatives Legal and Constitutional Affairs Committee.

The Dreyfus Report: a regression from 1994

Kim Sawyer

The history of whistleblowing legislation is about snakes and ladders. This is how legislation has evolved in the United States and how it is evolving in Australia. The Legal and Constitutional Affairs Committee of the House of Representatives, chaired by Mark Dreyfus, inquired into whistleblowing over the last 8 months, and reported on February 25. The Dreyfus Report represents progress, but at some cost. The recommendation for a Public Interest Disclosure Bill, and the associated repeal of the whistleblower provisions in the Public Service and Parliamentary Service Acts of 1999, is progress. Australia needs Commonwealth legislation, and it needs uniform legislation. But the Dreyfus Report is also a regression from the standard set by the 1994 Senate Select Committee on Public Interest Whistleblowing. The 1994 Report is an Australian benchmark, and with the Dreyfus Report, we have regressed a lot in 18 years.

The 1994 Senate Committee listened to and recommended for whistleblowers. The Dreyfus Report is about managing the whistleblowing problem. It is written for legislators not whistleblowers. The inquiry itself had a high co-dependency with the Whistling While They Work (WWTW) project, coordinated by Dr AJ Brown. No one can deny that the WWTW study is a comprehensive snapshot of whistleblowing in the public service in a given year. The study was a cross-sectional study of 7663 public servants and 118 public agencies and it elicited many useful statistics about an average hypothetical whistleblowing experience. But the WWTW study is not representative of my whistleblowing experience, nor of the 16 unresolved cases which were profiled in the 1995 Senate Select Committee Report, nor of many of the cases represented by the membership of WBA.

Whistleblowing on systemic problems is best studied longitudinally, namely over a period of time, not cross-sectionally with a snapshot at a particular time. A longitudinal study reveals two issues that a cross-sectional study cannot. First, it reveals the repeated regulatory failure that whistleblowers on systemic problems typically encounter. Secondly, it reveals the long-standing discrimination that these whistleblowers typically experience.

Kim Sawyer

My own whistleblowing experience taught me that regulatory failure is the main problem for a whistleblower on a systemic problem: the auditor who prefaced his report with the words "Under the direction of senior management"; the auditor-general who was not concerned when financial documents were being shredded while an audit is being conducted; the Visitor [high-level appeal person for a university] who took 400 days to determine that a Professor was not a member of a university; the education regulator who told me that an institution he regulated was hermetically sealed. In all, I approached regulators more than ten times over the years, and received ten non-responses. That has been the common experience for the whistleblowers in the systemic failures of Enron, WorldCom, HIH, and more recently Madoff and Stanford. The 1994 Senate Select Committee recognised the importance of the longitudinal case study. They listened to and learnt from case histories of regulatory failure. They learnt that the main question in whistleblowing remains *Who regulates the regulators?* That is the question Dreyfus ignored.

There are four principal limitations with the Dreyfus Report. The main problem is Recommendation 4 that the Commonwealth Ombudsman is the authorised authority for receiving and investigating public disclosures. This is a recommendation for the status quo. To be sure, the Dreyfus Committee in recommendations 18 and 19 allows other agencies to receive disclosures (the Aged Care Commissioner, the Commissioner for Law Enforcement Integrity, the Commissioner of Complaints, National Health and Medical Research Council, the Inspector-General Department of Defence, the Privacy Commissioner and the Inspector-General of Intelligence and Security). But the Commonwealth Ombudsman remains the overseeing agency. The 1994 Senate Select Committee recommended that a new agency, a Public Interest Disclosure Agency (PIDA), be created. It specifically rejected the proposition that an existing agency continue as the principal agency for receiving and investigating disclosures, citing three reasons for their decision: first that immediate action needed to be taken about whistleblowing, secondly that an independent agency needed to be created to gain the trust and confidence of whistleblowers, and thirdly that the existing agencies and procedures were not operating to the satisfaction of whistleblowers.

Nothing has changed since 1994. WBA, and indeed most whistleblowers who made submissions to the Dreyfus Committee, supported the establishment of a PIDA. But these arguments were rejected by the Dreyfus Committee. They recommended against a new order. For whistleblowers, this is a significant loss.

The second limitation of the Dreyfus Report is that the protections are very weak, if prescribed at all. Recommendation 14 states that

> The Committee recommends that the protections provided under the Public Interest Disclosure Bill include immunity from criminal liability, from liability for civil penalties, from civil actions such as defamation and breach of confidence, and from administrative sanction.

These protections are meaningless. There are no prescribed penalties and no suggestion that the career of the whistleblower should be monitored for some time after the whistleblowing. Discrimination against a whistleblower doesn't end with the whistleblowing; it persists for years afterwards. Contrast the Dreyfus committee recommendation with just some of the protections in the False Claims Act which include

> Any employee who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment by their employer because of a False Claims action shall be entitled to all relief necessary, which includes reinstatement with the same seniority status such employee would have had without the discrimination, twice the amount of back pay and compensation for any special damages sustained including litigation costs and attorneys' fees. Secondly, whistleblowers are entitled to 15-25% of the fraud recovered.

Thirdly, the dismissal of the False Claims Act in paragraphs 5.44 to 5.52 is lamentable. The Committee ignored so much international evidence on the role of the False Claims Act as a combined anti-corruption and whistleblowing framework, choosing instead to refer in paragraph 5.50 to the deliberations of this same committee in 1989

> The issue of qui tam–style rewards for whistleblowers was considered by this Committee in 1989 as part of a review of the adequacy of existing legislation on insider trading in financial markets. That Committee heard concerns about the credibility of evidence that was induced by rewards and formed the view that such rewards were not suitable in Australia's context: The Committee rejects any suggestion that a system of rewards or bounties be introduced in Australia. Such a system is incompatible with current attitudes in relation to the credibility of evidence. It is also incompatible with accepted principles and practice within Australian society.

It is unacceptable that the Committee would refer back to such outdated material, given the wealth of contemporary evidence to the contrary. As I noted at the 2008 Whistleblowers Australia conference, the False Claims Act is the most effective legislation for combating fraud on the US government. Since 1986, $20 billion of fraud money has been recovered, and False Claims actions are now running at 50 times the rate before amendments were made in 1986. The deterrent effect of the False Claims Act has been estimated to be 10 times the fraud recovered. It is also a cost effective; the US government is recovering $15 for every $1 invested in False Claims Act health care investigations. While most False Claims actions in the 1980s related to defence, 630 out of 1000 pending actions relate to health, with 46% of health care fraud now uncovered by whistleblowers. By ignoring the False Claims Act, the Committee has done Australia and whistleblowers a great disservice. The Committee's final comment in this section reflects their poor understanding of whistleblowers in the workplace, and their persistent and often invisible discrimination. They express the view (paragraph 5.60) that

> Australia's honours system should continue to recognise and celebrate those who have made a difference in their fields. The Committee considers that recognising whistleblowers where they have made a contribution to the integrity of public administration sends an important message about the value of an open pro-disclosure culture. Agency heads should actively consider recognising whistleblowers within their organisation through their own existing rewards and recognition programs.

Finally, as I noted in my testimony to the Committee, the major whistleblowing problems in this country occur when private and public funding is combined and there is maximum discretion. The universities and the hospitals are where we would expect a large number of whistleblowing cases. In the 1994 Senate Report, education, health and banking were separately referenced. Yet there is no such recognition in this report.

We have regressed a long way since 1994. A comparison of the 39 recommendations of the 1994 Senate Select Committee Report and the 26 recommendations of the Dreyfus Report show how far we have regressed. With the Dreyfus Report, there is no education program, no PIDA, no involvement of community organisations such as WBA in the overseeing of whistleblowing procedures (through the Board), no clearing house role of the PIDA and separation of investigation and protection, no involvement of industry ombudsmen, no specific reference to the private sector and no tort of victimisation. The 1994 Senate Committee listened to whistleblowers and learnt about regulatory failure. The Dreyfus Committee should have done the same.

Kim Sawyer is a longstanding member of Whistleblowers Australia.

See pages 5-9 for other articles on the Dreyfus report, by AJ Brown, Bill De Maria, Carolyn Overington and Mark Dreyfus.

Radiotherapy underdosing at the Royal Adelaide Hospital

Geraldine Macdonald

RAH radiation investigation launched (*The Independent,* 25 July 2008)
Wrong doses of radiation given to patients at Royal Adelaide Hospital (*The Advertiser,* 25 July 2008)
Five lives cut short in radiation bungle at Royal Adelaide Hospital (*The Sunday Mail* (South Australia), 11 September 2008)
Radiation bungle results in 14 deaths (*The Australian,* 11 September 2008)

These were some of the headlines in the papers last year, covering the two-year-long underdosing of patients receiving radiation therapy at the Royal Adelaide Hospital. I was the whistleblower. This is my story.

Background

About half of cancer patients would potentially benefit from radiation therapy. Delivering the correct dose is crucial. Too little, and the patient endures both the treatment and its side effects but the tumour is likely to recur. Too much, and the side effects can become much worse. The likelihood of destroying the cancer is non-linear with dose — usually, if the prescribed dose is too low by a few percent, the likelihood of controlling the cancer drops by a greater amount.

Physicists are responsible for calibrating the linear accelerators which produce the radiation — and for a range of other quality assurance checks. In a good hospital, the frequency and tolerances of these checks are specified in writing. When the error was made at the RAH, many of these documents were incomplete (some missing tolerances and frequency) and some were actually incorrect. The physicists were expected to simply remember which documents to use, which to not use and when to seek out other documentation.

Working at the RAH

In my first few years of working at the RAH, I discovered that several checks had been carried out to different tolerances, or in significantly different ways, by different staff members. The quality of work varied, with the potential to affect patient care. Thus far though, I had not experienced that it had. But I worried about what might happen.

Royal Adelaide Hospital

On several occasions, I raised inconsistent work practices and errors with the person responsible for quality assurance, Lee Lesley, who reacted with hostility to my concerns, both privately and in front of other staff members. Lesley suggested to other staff that I "created problems where there were none" and was "difficult to work with." Reluctantly (because it felt like an admission that things were not right in my workplace) I started keeping a log of technical errors and near misses.

When I suggested that a table be created listing the quality checks carried out, along with their tolerances and frequencies, and offered to compile it, Lesley suggested — in front of about 10 colleagues — that "only weak staff members need written instructions" and that "professional" staff "know what to do." This was in my opinion not sound judgement — even airline pilots have checklists of items they must go through before each flight, and this practice has reduced the number of accidents. But faced with public humiliation at the meeting, I did not argue my case. My colleagues, watching this happen, mostly looked away in embarrassment. No-one spoke out in my support.

Other staff members started avoiding me. When Lesley was not around they would prefer to not talk to me, avoiding eye contact. One night after work, when I met her after everyone else had gone home, one colleague said "I wish I could say something but I'm afraid I'll be treated like Lee treats you." Another called Lesley's behaviour towards me "venomous." As other staff were increasingly reluctant to communicate with me, even about work, my professional life was moving towards untenable.

At this time, the stress I was under at work was definitely affecting me at home. My self-confidence was being eroded by the constant criticisms and the isolation at work. I would come home from work and just want to go to bed to not have to think about my situation at work. Looking back, I was starting to suffer from depression. And yet I knew I was right — the varying work practices and quality checks which were not carried out adequately posed a real risk to patients. If it had not been for the unfaltering support of my partner and best friend, both of whom spent night after night listening and offering support, I would simply have broken down.

I discussed the bullying I was exposed to with the HR department. Their advice was that if I complained, my situation at work would probably worsen — and so I decided not to. Not knowing what else to do, and hoping that the bullying would not escalate, I kept doing my job.

Around this time, I read Tim Field's excellent book *Bully in Sight* about workplace bullying. Reading it was something of a revelation — in more sections than I care to remember, I thought "that's exactly what's happening to me!" The book helped me understand what was happening, and sadly anticipate what happened next. I would recommend it to anyone who thinks they're experiencing workplace bullying.

Discovering the error

Then, as I was working on a software commission with a colleague, Chris, we discovered the underdosing error. It was not discovered by the quality control checks designed to detect it, but by accident. It took us several nights to make absolutely sure an error had been made, and to piece together how it had happened.

The amount of radiation output by a radiotherapy treatment machine is very stable — as might well be expected. At the RAH, it was measured once a year, and usually varied by less than 0.5%. Because the measurement was so crucial, it would usually be carried out by two staff members — independent

checking is crucial in radiation therapy to minimise the likelihood of errors.

However, in 2004 the measurement was carried out by a single staff member. Lesley, who should have participated as the second staff member, chose to remain in the office. The staff member who carried out the measurement followed written instructions but had no idea that what was being measured would directly affect the output of the treatment machine, nor what the previously-measured values had been. The value obtained in this measurement is now accepted to have been wrong — 5% different from the previous year's reading.

Being in charge of quality control, Lesley knew the importance of what was being measured, and had access to previous values. A 5% change in a crucial parameter which usually varies very little should have rung loud alarm bells. Nonetheless, the highly unlikely result was not questioned and Lesley had the computer-based treatment planning system changed, which in turn changed the actual radiation dose received by the patient. From that day, patients treated at that treatment suite were underdosed by 5%.

In 2005, the measurement was carried out again — correctly this time. The measured value was 5% different from the 2004 value but agreed well with the value from 2003. Despite this, the error was not corrected and the underdosing continued for a second year.

On 21 July 2006, before the 2006 measurement was done, the error was discovered by Chris and myself.

After discovering the error

As soon as we were sure of what had happened, Chris and I spoke to senior staff, including Lesley, and the error was corrected. Chris and I discussed whether the error would be communicated to other staff, especially the doctors responsible for the treatment of the patients — Chris, who was relatively recently employed at the RAH, believed it would be communicated accurately and openly. I suspected it would not. I believed that, at the very least, the radiation oncology doctors whose patients had been underdosed must be told. I also thought it advisable to tell the physicists what had happened so they might learn from the mistake. The radiation therapists who worked on the treatment suite — who were surprised that suddenly, all the patients on their machine had to have their treatments recalculated and that all the new doses came out 5% higher — asked questions but were generally not told what had happened.

Royal Adelaide Hospital

I struggled to accept the continuing silence about what had happened. I discussed it at length with Chris, who held out hope that Lesley "would do the right thing" as Chris put it. We agreed that if the error had not obviously been communicated to the doctors a few weeks later, we would discuss it with a more senior manager, Kerry Jones.

I was aware of the error and its likely consequences on patient survival. A treatment suite would typically have treated about 500 patients in a year. The precise number of patients who would not be cured is difficult to determine: one estimate based on model parameters suggested 10% of those patients who would otherwise have been cured would now not. The numbers were simply frightening. That was about 50 patients who might now not recover from their cancer.

I discussed the matter with a specialist in radiation biology, who confirmed that the underdosing would probably affect patient survival rates.

I tried putting the numbers into context. I read about radiation incidents and accidents. The Johnston Archive (http://www.johnstonsarchive.net/nuclear/radevents/radevents1.html) provides a comprehensive list. Apart from Hiroshima, Nagasaki and Chernobyl, the greatest number of deaths attributed to a single radiation incident or accident is 18.

Meanwhile, my professional life continued to worsen. Lesley avoided speaking to me whenever possible, criticised me to my colleagues and scrutinised my work very closely. I and my immediate colleagues were banned from attending meetings on a particular type of treatment which we participated in. It was becoming nearly impossible for me to do my job.

I felt very saddened and worried by the error and its likely consequences, frustrated at the way in which the error was apparently not discussed and desperate that my professional life was being made all but impossible by Lesley. In my profession, it is difficult to change jobs — very few employment opportunities exist. Where would I go? And I felt deeply saddened at the way almost all of my colleagues saw Lesley's blatant bullying of me and turned a blind eye. A few did not — although they did not confront Lesley they continued to speak to me, and to socialise with me — these were not always the people from whom I would have expected such brave behaviour, but they helped me retain some belief in other human beings — something which is often difficult for victims of workplace bullying.

A few weeks later, the doctors still did not appear to have been told what happened. I discussed it with Chris who had had a change of mind. Chris no longer wanted to ask Jones to ensure the error was communicated to the doctors. The following week, I did it myself, in writing.

Having received my letter, Jones summoned me and said "now that you've put it in writing, I'll have to take it seriously." Jones assured me the matter would be taken seriously and dealt with. I dared to hope this would be true.

A few weeks later, Lesley accused me of making a technical error which had affected patient treatment. This was done in writing, and then brought up in a meeting attended by about 10 colleagues. What had actually happened was that I had encountered a problem, but the problem had been resolved. Patient safety had not been compromised.

The other staff members involved in the matter confirmed my version of the story — in writing — but it made no difference. When I tried explaining what happened in the meeting, Lesley talked over me, with a big smile. After

the meeting, when the minutes reflected Lesley's accusation but not my explanation, I asked for them to be corrected. This never happened.

Feeling that my professional credibility was now being openly questioned by Lesley, I asked Jones for help in resolving the accusation. Jones phoned me up and instructed that I would be moved away from my workplace "for my own safety." When I said I'd rather not I was told Jones would force me to take sick leave if I did not agree to move voluntarily. Jones said an investigation into the alleged bullying would be carried out. Feeling as if I was not left with any options, I agreed. I still held out hope that the investigation would be fair.

Jones also suggested I seek counselling "to learn to control my facial expressions" because Jones perceived them to be rude. Wanting to cooperate, I had several meetings with a senior hospital counsellor. And although the counsellor and I agreed that the idea of her teaching me to control my facial expressions was ridiculous, my conversations with her offered a chance to air my concerns and discuss them. Over the next months, she provided very valuable help, as did my partner and best friend, who made a very difficult time easier to bear.

A senior staff member from outside the hospital but inside the health service was appointed to do the investigation into the bullying. Although his initial estimate was that it would take 3 weeks, it took 5 months. I discussed the bullying with him only once, for less than two hours. Although I offered to talk to him several times after that, he declined. I started to worry about the fairness of his investigation.

Some time into the investigation I had a job interview for a position one level up from my position. Although I had been removed from my department I chose to attend the interview: I had applied before being forced to move. However, Lesley was on the interview panel. I discussed this with Jones, who insisted that, despite the ongoing investigation of Lesley's bullying of me, it was right and proper that Lesley was on the panel. Unsurprisingly, I did not get offered the job — it went to someone with much less experience.

At the same time, Lesley applied for a position that would constitute a promotion. The job advertisement specified that applications for the position could be sent to either a senior doctor — or to Lesley, who successfully obtained the promotion.

Geraldine Macdonald

My reaction to these events was increasing incredulity — the events were obviously unfair, yet no-one challenged them. How could people — like Jones — be aware of them and let them happen? I also felt unable to act, as Lesley had complained to the investigator that I was argumentative and difficult to work with.

Once I had been told my job application had been unsuccessful and Lesley's successful, I wrote to Jones, citing "grave concerns" about the appointment process. As a result, I was summoned to Jones's office — with a few hours notice. In the meeting — which included an admin staff member and a HR staff member — Jones repeatedly swore at me, calling me a "shit stirrer" for raising my concerns. At the end of the meeting, I was biting the insides of my cheeks very hard to avoid bursting into tears. When they ended the meeting, I could not even say goodbye as I left the room. I spent the next while in the bathroom, sobbing, trying to be as quiet as possible so no-one would know.

After the meeting in which I was verbally abused, I began to show symptoms of post-traumatic stress disorder (PTSD): I felt physically and emotionally numb, was depressed, couldn't sleep, couldn't concentrate, was anxious, couldn't stop thinking about what had happened. For about 24 hours I felt nauseous and could not eat. I felt overwhelmed at the injustice being committed against me, yet unable to do anything about it. My depression worsened — it was now clear that senior management supported Lesley.

At this time, I felt extremely isolated at work. I could spend an entire day at work and not speak to anyone. The following poem describes how I felt.

Outcastedness

My outcastedness does wear me down
I try to hide behind a frown
But still the distance to my peers
Awakens and renews my fears

they dress me in a cloak of i-
solation, it rests heavily
a weight upon my shoulders, I
am dressed in blackness, smotheringly

its weight becomes a part of me
my head bends, my world further shrinks
how can I less of a burden be
I fear what everybody thinks

I have become less than I was
Eyes looking at me do avert
Yet clad in black, I live my loss
I still cannot myself desert

Five months after it began, the investigator had produced a 29-page report which I was not allowed to read. But I was told its main conclusions — that Lesley believed I was incompetent and difficult to work with, therefore Lesley's treating me differently from other staff was "understandable." The investigator concluded no bullying had taken place.

A resolution — and a new beginning

I was faced with two problems. One — that as far as I knew, the doctors of the patients who had been underdosed still had not been told what had happened. Two — my employment. I could not remain at the RAH.

HR at the RAH had threatened disciplinary action if I "spoke disrespectfully" of my colleagues there. Before trying to inform the doctors of the underdosing error, I needed a new job and to have regained an even keel.

After some time, I secured a new job. For the first few weeks I kept worrying that my new colleagues might be as unpleasant and uncaring as my previous colleagues, but they put me to shame. They were professional, kind, respectful people. My healing could begin.

I had contacted Whistleblowers Australia, and through them received help which proved invaluable, particularly advice that the underdosing error and the bullying were two separate issues and must be treated as such. Had I not done this I do not believe my disclosure would have been taken seriously.

Having discussed the case with WBA, I wrote a disclosure to the Chief Executive of the South Australian Department of Health, Tony Sherbon, claiming protection under the Whistleblowing Act of South Australia. The submission did not make reference to the bullying; it was a largely technical document outlining what had happened and asking that the doctors whose patients had been underdosed be told.

For two weeks I heard nothing. Then I was contacted by the DOH and told that they had verified my disclosure and would go public. My anonymity would be preserved. Several investigations were undertaken — news stories and press releases are available on the web (search for "Royal Adelaide Hospital radiation underdose" in Google news, or read the press announcements at the DOH's web site).

Royal Adelaide Hospital

It turns out the patients' doctors had been told. But despite my repeated attempts to find this out, I had not been told this — if I had, I would not have contacted the DOH. Nonetheless, I felt a huge sense of relief now that at least I knew that the patients' doctors were aware of the error.

After an independent investigation, the RAH was instructed to improve its protocols. And, if a potentially significant error happens in future, it must inform the hospital legal team (the RAH chose not to) and the SA Department of Health.

Since the disclosure, several errors in the treatment of cancer patients have received a lot of attention in the news (The incorrect dosage of chemotherapy patients at the Lyell McEwin Hospital was referred to as the "third health bungle in South Australia" in *The Herald Sun,* 18 December 2008.)

Lesley and Jones retain senior positions at the RAH. I have a job which I enjoy, with colleagues who are professional, respectful and kind, and I have recovered from the depression and PTSD brought about by the bullying and verbal abuse.

I have learnt a number of lessons which I would like to offer as food for thought.

- The SA Whistleblower's Act can provide protection for the whistleblower.
- The SA Department of Health investigated my submission fully and thoroughly. As a result, steps have been taken to decrease the likelihood of a similar error happening in future.
- The severe workplace bullying whistleblowers are sometimes exposed to can affect their lives profoundly and very negatively. Personal support can offer a lifeline.
- On witnessing bullying and harassment, most people will do nothing. But a few selected people will be prepared to offer help. It may not be the people you'd expect.
- Obtaining advice from someone with experience in the area on how to approach whistleblowing can be a great help.
- Because of my whistleblowing, I now know that the doctors of the patients who were underdosed know. I have no regrets. Not one.

All names in this article have been changed, including the author's. "Geraldine Macdonald" can be contacted at anon_home@yahoo.co.uk

Internet filtering

Brian Martin, *Whistle* editor

Internet filtering has been a hot topic in email exchanges among members of Whistleblowers Australia's national committee.

The Australian government proposes a scheme to block certain websites to prevent viewing of child pornography.

Some WBA committee members support filtering, saying that some things on the Internet — such as pornography, violence, bomb-making information and defamatory material — are so horrible or dangerous that they should be censored. They argue it is the government's responsibility to protect the most vulnerable members of the community, that censorship of the Internet is justified by this responsibility, and that few websites would be affected.

Opponents of filtering say that it won't work. For example, child pornographers seldom use open websites that could be blocked by the filtering scheme, but instead use email or other means not affected by the proposed plan. Opponents also argue that if the government has censorship power, it is likely to be used for political purposes, including against whistleblowers.

In the middle of this discussion, Wikileaks published a version of the government's list of banned sites on its own website. The list included quite a number of legal and apparently innocuous sites. Supporters of the government plan condemned Wikileaks for making the list available whereas critics said this was what they had predicted, namely that leaking of the list was inevitable and would actually publicise the sites involved.

For more information, supporters of the scheme can consult the government's statements whereas critics can check out the sites of Electronic Frontiers Australia and GetUp.

In the WBA discussion, some supporters of filtering introduced a second line of argument: that Internet filtering is not a whistleblowing issue.

Other hot topics for discussion in recent months have been the definition of whistleblowing and the Dreyfus report. The latter is covered in this issue, pages 5-11.

Whistleblowers Australia contacts

Postal address: PO Box U129, Wollongong NSW 2500

New South Wales
"Caring & Sharing" meetings We listen to your story, provide feedback and possibly guidance for your next few steps. Held 7.00pm on the 2nd and 4th Tuesday nights of each month, Presbyterian Church (Crypt), 7-A Campbell St., Balmain 2041.
Contact: Cynthia Kardell, phone 02 9484 6895, fax 02 - 9481 4431, ckardell@iprimus.com.au
Website: http://www.whistleblowers.org.au/
Goulburn region: Rob Cumming, phone 0428 483 155.
Wollongong: Brian Martin, phone 02 4221 3763.
Website: http://www.uow.edu.au/arts/sts/bmartin/dissent/

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

South Australia: John Pezy, phone 08 8337 8912

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

Victoria: Stan van de Wiel, phone 0414 354 448

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

2009 conference & AGM

Whistleblowers Australia's 2009 conference and Annual General Meeting will be held on Saturday-Sunday 5th-6th December at the University of Adelaide's Aquinas College, North Adelaide.

The College is located at 1 Palmer Place, North Adelaide, on the corner of Palmer Place and Montefiore Road. This is on the edge of the Parklands just across the road from Montefiore Hill, and the lookout called Light's Vision, 1 km north of the Adelaide CBD. Many areas of interest both in the city and North Adelaide are within walking distance (10-20 minutes walking).

The College is 7 km from Adelaide Airport, and a bus ticket costing under $5 will take interstate attendees from the airport to the college with a change of buses in the CBD. Information about this will be provided in subsequent editions of *The Whistle.*

Accommodation for the Conference will be available at the college for the nights of Friday December 4th, Saturday December 5th and Sunday December 6th. The bed and breakfast rate is $50 per night per person.

There will be a conference dinner at the college on the Saturday night. It will be a three-course meal with a vegetarian option and will cost no more than $30. Lunch as well as morning and afternoon tea will be provided to attendees at the Saturday conference and the Sunday AGM; the cost of these sessions will be in line with previous years.

Information about the programme will be provided in the July edition of *The Whistle.*

Whistleblowers Australia membership

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

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