

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

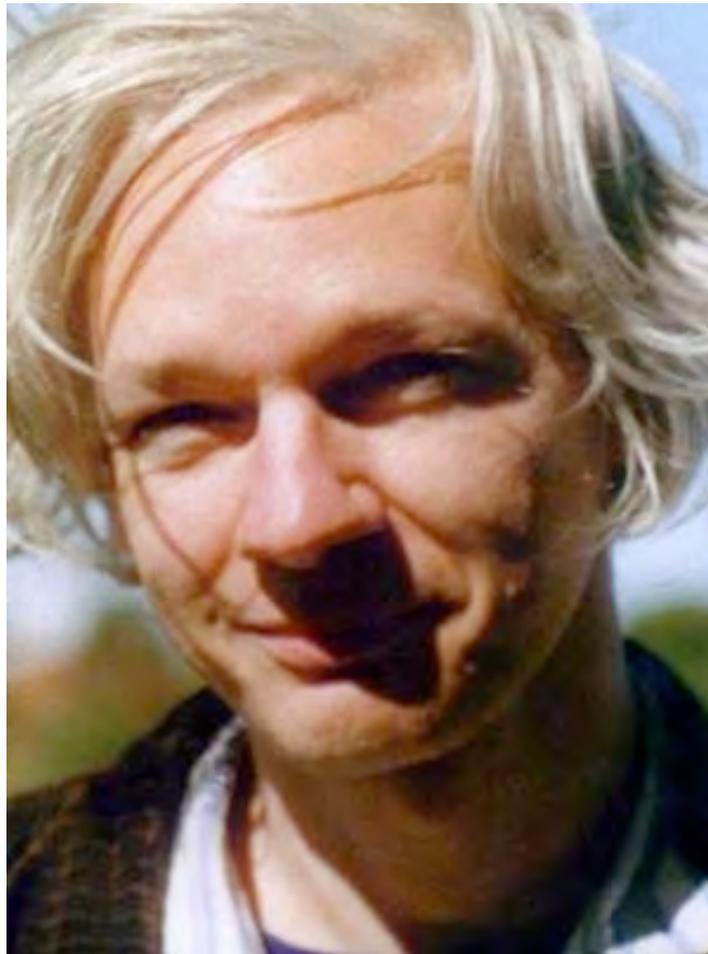
*The*



*Whistle*

No. 63, July 2010

Newsletter of Whistleblowers Australia



Julian Assange, Wikileaks founder

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## Media watch

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### ANSTO is in the hot seat over safety concerns

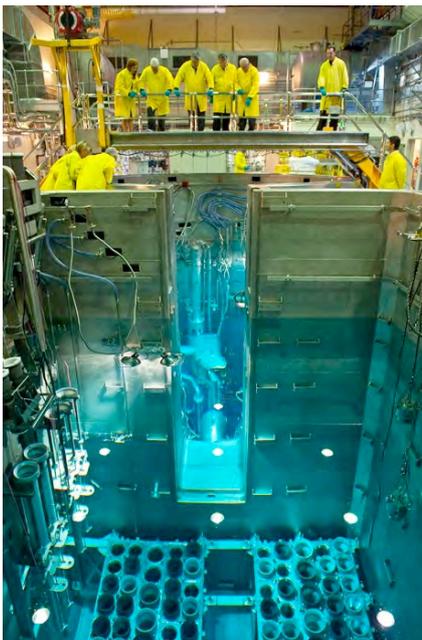
Rosita Gallasch

*St George & Sutherland Shire Leader,*  
11 May 2010

AS AN employee of ANSTO [Australian Nuclear Science and Technology Organisation] for more than 20 years, David Reid's colleagues trusted him enough to make him the occupational health and safety officer in the ANSTO Radiopharmaceuticals and Industrials (ARI) facility.

He took the position at Lucas Heights seriously and understood the detrimental consequences of an accident.

One such accident occurred on August 28, 2008, when a young colleague was exposed to radiation to his lower abdominal area.



Opening of ANSTO's \$10M radiopharmaceutical production facility

ANSTO said it took almost an hour for the incident to be reported while Mr Reid said he reported it 2 hours later, and it was a further three to five hours for the dropped vial containing highly radioactive material to be recovered.

Mr Reid said the dosage was so high their instruments could not gauge a radiation reading when he first tried

to measure it, or even after they had cleaned up the area.

This incident is now the basis of a report by industry watchdog, ARPANSA, released in January, which uncovered a raft of safety and procedural inadequacies at ARI.

Last week Mr Reid, who has been suspended since June 2009 because of a number of workplace incidents, became a whistleblower about the safety standards at ARI. He aired his claims on the ABC's Lateline.

ANSTO has denied the claims.

"They're in denial of the problems there," Mr Reid said.

"Which is a bad thing because they'll never fix the problem if they won't acknowledge it and do anything about it."

After Mr Reid was appointed safety officer, he said he confronted a culture where middle managers bullied staff into waiting for extended periods to report incidents, if at all.

He said he became a walking target when he tried to have the August 2008 incident and others addressed and he was suspended as a result.

A statement issued by ANSTO said the staff member who was exposed to radiation presented himself to its in-house medical centre 12 months after the incident.

He was told his elevated white blood cell count was related to an overseas holiday. The statement said it carried out four separate investigations after Mr Reid's initial complaint in April 2009 and found there were no radiation exposures to employees outside normal occupational levels.

The final ANSTO investigation concurred with the ARPANSA report with relation to concerns about lack of training and procedures at ARI.

The ANSTO statement said these had been addressed and all of ARPANSA's recommendations were implemented or substantially completed.

Mr Reid said senior management had little idea about incidents that occurred at ARI because middle managers were too scared to report them and look bad, so did nothing to address the problems.

He said everyone who worked at ARI should be concerned about their personal safety.

"They say they're going to put in place all seven recommendations of the ARPANSA report but they're not investigating why these things keep happening," Mr Reid said.

ANSTO is the subject of two further incident inquiries and a report by CommCare, the commonwealth workers' compensation insurer.

#### Scathing report

Safety and procedural concerns raised in the ARPANSA report:

- Extended tolerance of poor handling of highly radioactive vials
- Lack of an improved handling system to prevent vial breakages
- Inadequate machine fitout of safety measures
- A lack of staff understanding of procedural protocol and reporting following an incident
- Lack of management awareness of problems and incidents

Are there safety concerns at ANSTO?

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### Bizarre uni ritual leads to staff laws

Markus Mannheim

*Canberra Times*, 24 March 2010, p. 1

THE Australian Government will protect ABC journalists and Australian National University (ANU) staff from retaliation if they reveal corruption, misbehaviour or waste within their organisation. The decision follows appeals for protection from Canberra physicist Andrew Stewart, who says the university forced him into retirement after he exposed a bastardisation rite known as the "pitchfork rituals" within the applied mathematics department. Cabinet Secretary Joe Ludwig announced last week he would introduce new laws to shield public servants from criminal penalties for revealing "serious matters" of wrongdoing to the public. His office confirmed yesterday the laws would also apply to the ABC and the ANU, which fall under the Commonwealth

Authorities and Companies Act. Dr Stewart, who had tenure at the university for 25 years, told a parliamentary inquiry into whistleblowing in 2008 that the rituals were, “at best, inappropriate and degrading.”



The Applied Mathematics Department at the Australian National University

He said postgraduate students who were deemed to be falling behind in their work were required to stand up in front of a department meeting, bend over, have a pitchfork held close behind them and listen to a “comic” poem being read which, among other things, referred to postgraduate students as “little shits.” The university investigated the rituals in 2002 after Dr Stewart revealed their existence and the department was ordered to stop them. But the physicist says he was punished by being transferred out of his area into a “virtual department (one that had no physical presence).” He told the parliamentary inquiry that, as an academic, he was unprotected by either federal or ACT whistleblowing laws. ANU vice-chancellor Professor Ian Chubb wrote to Dr Stewart in 2005 to apologise for his experiences and to assure him that “no student of the university will be required to participate in ritual-type activity such as the previously held ‘pitchfork’ activities.” Dr Stewart declined to comment yesterday, saying he preferred not to add to the evidence he gave to Parliament.

## “I was just doing my job”

Zoe Cormier

*New Internationalist*, April 2010, p. 15

THE STORY reads like a Hollywood script: the family doctor for a small town believes the people are suffering from a high number of rare cancers. As this small community sits downstream

from the world’s largest human-made bodies of toxic water, the implications are obvious.

When the physician publicly voices his concerns he is put under investigation, charged with professional misconduct, and threatened with the loss of his licence.

In reality, truth can be just as strange as fiction.

“If somebody had told me 10 years ago that this would happen, I would never have believed them — I would have thought they were crazy!” says Dr John O’Connor.

He first aired his concerns on CBC Radio in 2006, reporting an unusual number of cancers in the community, particularly cholangiocarcinoma, a rare and lethal form of bile duct cancer. Following the subsequent media flurry, the Government pledged to study the health of the community. “It was only when the media became involved that the government became concerned,” he says.

But his public statements also spurred charges that he had violated his professional code of ethics, including “engendering mistrust” in the government and causing “undue alarm” in the community.

In January 2007 five government bureaucrats (three from Health Canada, one from Alberta Health and one from Environment Canada) filed a complaint with the Alberta College of Physicians and Surgeons (CPSA), and between 2007 and 2009 O’Connor was formally investigated, under threat of his licence to practise being withdrawn.

For a government agency to lodge such accusations is highly unusual, according to George Poitras of the Mikisew Cree First Nation. “I suspect it had everything to do with the Government’s determination to continue exploitation of the tar sands at any expense. It put a huge amount of stress on him for just doing his job.”

Two months after the charges were laid, the Alberta Medical Association passed a unanimous motion supporting Dr O’Connor and his professional obligation to advocate for the needs of his patients.

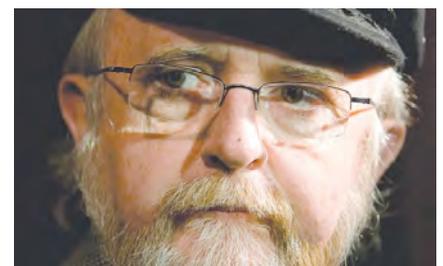
He was soon cleared of three charges, but the fourth — the accusation of causing “undue alarm” — remained. In March 2008 the people of

Fort Chipewyan issued a public statement to Health Canada and the CPSA insisting that the charge be dismissed. “This accusation was incredibly shocking — how could he have caused undue alarm? We could see with our own eyes that people were sick,” says Eriel Tchekwie Deranger of the Athabasca Chipewyan First Nation.

In November 2009 the College issued its final report clearing the physician of all charges. Though it did support some of Health Canada’s claims, the College stressed that “... any physician’s advocacy in raising potential public health concerns is to be lauded.”

It did find that Dr O’Connor had made “inaccurate or untruthful claims” with regards to the total number of cancers in the community. In retrospect, he says, though he “was 80 per cent correct,” he would have had the cancer cases diagnosed more carefully by a pathologist before sounding the alarm.

But if he could do things again, he wouldn’t be more reticent — just the opposite. “I would have been far more aggressive and verbal from the outset,” he says. “Back then, I was naive. I truly felt that the Government would take action. But they did everything they could to minimize the connection between the sands and what is happening in Fort Chip. Now I know that the line between government and industry is blurred, and the line is probably non-existent in Alberta.”



Dr John O’Connor

Photo: Greg Southam, Canwest News Service, National Post

He has since featured prominently in four documentaries about the tar sands and become about as famous as a family doctor can be — fame the grey-haired Irish physician never anticipated or wanted.

“People have called me a ‘hero’ for being a whistle-blower but though I

play banjo, I am no good on the whistle,” he jokes.

“I’m not a hero; I was just doing my job. And my job isn’t over yet. But now I have nothing to lose. I found what I found, and I’ll say what I’ll say.”

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## **NHS consultant suspended from working for EIGHT YEARS for daring to speak out about high death rates**

*Daily Mail*, 15 May 2010

A LEADING heart consultant who blew the whistle on high death rates at his hospital has been banned from working for eight years — at a cost of £6 million to the NHS [UK National Health Service].



Dr Raj Mattu

Dr Raj Mattu was suspended in 2002 after he blew the whistle on dangerous clinical practices and high death rates at Walsgrave Hospital in Coventry.

The top practitioner was stopped from working and hauled before a High Court judge, the General Medical Council and now, when found innocent of all charges, is being disciplined for asking for his old job back.

Hospital bosses have reportedly spent as much as £6 million blocking his return.

Almost a decade after he first spoke out, the hospital has been found to have one of the highest death rates in the country.

Yet he is battling to resume his career as a cardiologist.

Last night, the defeated Labour Government stood accused of repeatedly breaking their 1997 election promise to protect doctors and nurses who spoke out to protect patients.

Dr Mattu’s supporters claim Labour health ministers were aware of his situation, but refused to intervene.

Hospital bosses suspended high-flying specialist Dr Mattu on allegations of bullying a junior doctor.

But the 48-year-old, who was found innocent in a £500,000 independent inquiry, was still not allowed to return to his job — even though a High Court judge ruled he should go back to work.

After the QC-led independent inquiry, University Hospitals Coventry and Warwickshire then reported Dr Mattu to the GMC, which also rejected the charges.

He was told he could return last year and began 18 months of retraining.

But now he has been told by hospital bosses that he will face further allegations at a new disciplinary hearing.

Dr Mattu, who was hired to raise standards in cardiology at the hospital, is being disciplined for asking for his old job back — which included pioneering heart research.

He has been forced to abandon his refresher training at two leading London hospitals by the hospital trust, which had organised the course.

Dr Mattu, who earned £110,000 as a specialist, last night said the saga has destroyed his career.

“This has taken an enormous toll on me psychologically,” he said. “To have been barred from doing the job I love for eight years has been a tremendous blow.

“I never believed that this could go on for so long. I have been hung out to dry by the hospital and I have had no backing or support from the Department of Health.

“Labour was pledged to protect people like me who spoke out on behalf of patients but I’ve been badly let down. Now that the trust has started new disciplinary action I have no idea where this will end.

“It’s an absolute nightmare. I thought when they finally agreed that I could go back to work that it was all over. But the hospital is continuing to persecute me.

“It has had a terrible effect on my mental and physical health and affected my relationships with family.”

Ted Needham, a research scientist who worked with the doctor, said: “Dr Mattu has not done anything wrong clinically. His only crime was to speak up on behalf of patients and report things he saw were wrong that were costing lives.”

He added: “He has been left in limbo. Without retraining he can’t go back to work. It’s the same as being suspended. He can’t organise his own retraining. That has to be sponsored by the trust.

“He has every right in law to go back to his old job which involved treating patients and doing vital heart research. But they want to take away his research work and he quite rightly wants to carry on.

“It is almost unbelievable that someone could be kept from their job for eight years and yet the Labour Party health team in Whitehall chose to ignore his plight and allow his persecution to continue. His friends and supporters were shocked by Labour’s indifference to his plight.”

Norman Lamb, Liberal Democrat health spokesman until the election, said: “It is frankly scandalous that a hospital consultant can be kept away from his job for eight years when he is completely innocent of any offence.

“Labour’s Health Secretary Andy Burnham really should have intervened and told Dr Mattu’s trust that it could not carry on in this way.

“If Dr Mattu is innocent then he should be allowed to carry on with his retraining. You cannot discipline someone simply because they ask to return to their old job.”

Department of Health guidelines state that long term suspensions should be avoided and suspensions should be dealt with speedily within six months.

Hospitals are also directed to avoid suspensions for non clinical reasons.

Tory Peter Bone, a member of the House of Commons Health Select Committee until the General Election, said: “It is outrageous that a doctor can be kept away from his job for so long without good cause.

“What on earth is going on for the Department of Health to allow a hospital trust to behave in this way?”

A former colleague of Dr Mattu said: “We had terrible death rates here according to the national statistics and

Raj was brave enough to point out where mistakes were being made.”



Walsgrave Hospital, Coventry

Walsgrave Hospital is one of 25 hospitals singled out in a report by Professor Brian Jarman for having higher than average death rates.

He urged that all the hospitals should be subject to immediate investigation by the Care Quality Commission.

A University Hospitals Coventry and Warwickshire NHS Trust spokesman said: ‘We are aware of the information being put into the public domain by Dr Mattu’s supporters. Much of the information being published is, in our view, inaccurate and misleading.

“We have however, being a responsible employer, made a commitment to keep matters between any of our employees and ourselves strictly confidential.”

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## Whistleblowing protections don't go far enough

Kim Sawyer

*The Age*, 31 March 2010

AUSTRALIA has made a first, very small, step towards uniform whistleblowing protection, but much more needs to be done.

Federal cabinet secretary Senator Joe Ludwig recently proposed a framework for whistleblowing protection within the Commonwealth public sector. The proposed scheme was in response to the Dreyfus Committee report of February last year, and comes more than 15 years after a Senate inquiry into public interest whistleblowing recommended legislation at the federal level.

Under Ludwig's proposals whistleblowers would be able to make protected disclosures to internal agencies, to the Commonwealth Ombudsman and, for the first time, to the media. Protections would include the ability to disclose anonymously, immunity from legal liability and, more generally, protection against victimisation.

Australia needs uniform Commonwealth legislation, but the proposed scheme is a step back from the standard set by the 1994 Senate Select Committee on Public Interest Whistleblowing. The Ludwig scheme is written for legislators, not whistleblowers. It manages whistleblowing, but it will not protect whistleblowers. And, it will not protect those whistleblowers who expose the systemic corruption that leads to systemic failure.

There are three main problems with the Ludwig scheme. First, the authorised authority for receiving and investigating public disclosures is the Commonwealth Ombudsman. The 1994 Senate Committee recommended that a new agency, a Public Interest Disclosure Agency (PIDA), be created. They specifically rejected the proposition that an existing agency continue as the principal agency for receiving and investigating disclosures reasoning that an independent agency needed to be created to gain the trust and confidence of whistleblowers.

Nothing has changed since 1994. Both whistleblowing advocacy groups in Australia, Whistleblowers Australia and the Whistleblowers Action Group, argue for the establishment of a new agency, to break from the inaction of the past.

Secondly, the protections of the Ludwig scheme are of little value. There are no prescribed penalties for victimisation, 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.

In the United States any employee who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against is entitled to all relief necessary, which includes reinstatement with the same seniority status, twice the amount of

back pay and compensation for any special damages including litigation costs.

Thirdly, the most effective whistleblowing legislation in the world is the US False Claims Act. The False Claims Act allows whistleblowers to initiate actions against false claimants on the government, and to receive compensation for their whistleblowing. The onus of proof is reversed.

The False Claims Act has given whistleblowers rights that other legislation has denied. A false claim has meaning beyond simple fraud; it also includes false reporting of results in medical testing, environmental and safety violations, kickbacks and bribes. Whistleblowers are entitled to 15-25 per cent of the fraud recovered.

The False Claims Act represents a public-private partnership between the government and the whistleblower, one of the most effective public-private partnerships of all. Since 1986, \$20 billion of US federal fraud has been recovered through the False Claims Act. It is cost effective; the US government is now recovering \$15 for every \$1 invested in False Claims Act health care investigations.

The False Claims Act has been so successful that 30 of the states in the US have adopted their own False Claims Acts, and countries as diverse as the UK and Lebanon are now considering False Claims Acts. Why shouldn't Australia?



Kim Sawyer

Whistleblowing results from regulatory failure. It has become important because, in many workplaces, monetary values have replaced the values of

the public interest. Whistleblowers have become the independent regulators.

A recent study of US corporate fraud found that the most important regulators of all were the whistleblowers. They identified 19 per cent of the fraud.

The most recent statistics from the UK suggest a ten-fold increase in whistleblower cases in the past decade. The evidence in Australia is similar. But in Australia, the response to whistleblowing has been like the US response to universal health insurance.

Whistleblowers have waited far too long, for far too little.

Dr Kim Sawyer is an honorary fellow at the School of Philosophy, Anthropology and Social Inquiry at the University of Melbourne.

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## Pentagon rushes to block release of classified files on Wikileaks

Jerome Taylor

*The Independent*, 12 June 2010

IT HAS the ingredients of a spy thriller: an American military analyst turned whistleblower; 260,000 classified government documents; and rumours that the world's most powerful country is hunting a former hacker whom it believes is about to publish them.

Pentagon and State Department officials are desperately trying to discover whether Bradley Manning, a US army intelligence officer currently under arrest in Kuwait, has leaked highly sensitive embassy cables to Wikileaks.org, an online community of some 800 volunteer cyber experts, activists, journalists and lawyers which has become a thorn in the side of governments and corrupt corporations across the globe.

Reports in the US say officials are seeking to apprehend Julian Assange, the website's founder who has pioneered the release of the kind of information the mainstream media are either unwilling or unable to publish.

Manning, 22, an intelligence analyst from Potomac, Maryland, who had been serving in Iraq, was revealed earlier this week as the source behind a highly damning leak earlier in the year

that showed harrowing cockpit footage of an American Apache helicopter gunning down unarmed civilians in Baghdad three years ago.



An image from the Apache video with Reuters photographer Namir Noor-Eldeen shown targeted

But the Apache video may have proven to be one leak too far. Adrian Lamo, a former US hacker turned journalist who had been conversing with Manning online and later gave up his name to the authorities, said he also claimed to have handed 260,000 classified US embassy messages to Wikileaks.

According to Mr Lamo, Manning said the documents showed "almost-criminal political back dealings" made by US embassies in the Middle East which, if true, would cause enormous embarrassment to key allies in a notoriously volatile area of the world. Mr Lamo claims Manning said that "Hillary Clinton and several thousand diplomats around the world are going to have a heart attack when they wake up one morning, and find an entire repository of classified foreign policy is available, in searchable format, to the public."

If those responsible for the site wanted any confirmation that the US military have them in their sights, they only need to look at their own website. In March this year Wikileaks published a leaked 32-page intelligence report which described the site as a "threat to the US Army." The report added: "The possibility that current employees or moles within [the Department of Defence] or elsewhere in the US government are providing sensitive or classified information to Wikileaks.org cannot be ruled out."

The site has previously shown that it is prepared to publish sensitive documents from US embassies. In January Wikileaks posted a classified cable from the US embassy in Reykjavik which described a meeting between embassy chief Sam Watson, the

British Ambassador, Ian Whiting, and members of the Icelandic government.

In an interview with the BBC news website – the only one he has given since Manning was arrested – Mr Assange refused to confirm whether the intelligence analyst was the source of the Apache video. He also said he had no knowledge of the 260,000 further files that Manning claimed to have leaked.

But while Mr Assange may be shunning media interviews, he seems to be making no attempt to keep a low profile. Yesterday afternoon, the site's Twitter page announced that Mr Assange would be appearing in Las Vegas later in the day for a panel discussion about protecting anonymous sources – appearing alongside former CIA agent Valerie Plame and Leonard Downie Jr, a former editor of the Washington Post who supervised much of the paper's coverage of the Watergate scandal.

An earlier tweet suggested Wikileaks would not look kindly upon any US government interference. "Any signs of unacceptable behaviour by the Pentagon or its agents towards this press will be viewed dimly," the post said.

### Website that breaks news

- Although Wikileaks is nominally hosted in Sweden, it fiercely protects both itself and the identity of its sources by routing all leaks through a series of servers around the world, which makes them virtually impossible to trace or shut down. "It's a very effective measure to mask who a whistleblower is and where they are connecting from," says Rik Fergusson, a cyber security expert at Trend Micro. "The only way to track it is in real time, which is almost impossible."

- Founded in 2006 by Australian-born former hacker Julian Assange, it has no paid staff and relies on volunteers and donations.

- In the past four years the site has released, among other items, the British National Party's membership list, detailed US military procedures for handling prisoners at Guantanamo Bay, Sarah Palin's emails, the University of East Anglia's "Climategate emails" and 570,000 pager messages intercepted after the 11 September terrorist attacks.

• Wikileaks claims its next big scoop will be to publish video footage of an air strike in Afghanistan that killed scores of civilians.

## Whistle-blowers' experiences in fraud litigation against pharmaceutical companies

Aaron S. Kesselheim, David M. Studdert and Michelle M. Mello  
*New England Journal of Medicine*,  
volume 362, number 19, 13 May 2010,  
pages 1832–1839

PROSECUTION and prevention of health care fraud and abuse are essential to reducing US health care spending. Currently, 90% of health care fraud cases are “qui tam” actions in which whistle-blowers with direct knowledge of the alleged fraud initiate the litigation on behalf of the government. If a qui tam action leads to a financial recovery, the whistle-blower stands to collect a portion of the award. From 1996 through 2005, qui tam actions led to more than \$9 billion in recoveries. Although such actions are touted as cost-effective and may deter inappropriate behavior, little is known about how well the qui tam process works.

From their vantage point at the center of the process, whistle-blowers have valuable insights. The goal of this study is to shed light on the motivations and experiences of whistle-blowers in cases of major health care fraud. We conducted interviews with whistle-blowers who were key informants in recent prosecutions brought against pharmaceutical manufacturers.

### Overview of the Qui Tam litigation process

The federal False Claims Act (FCA) prohibits the submission of false claims or statements to the government. Violators face fines of \$5,500 to \$11,000 per claim, plus treble damages. Whistle-blowers (referred to as relators) can initiate cases by filing a sealed complaint in federal court, nearly always with the help of a personal attorney. In our sample, 22 were employees of the defendant

company (insiders), including 9 at the executive or midmanagerial level and 13 lower-level employees.

The Justice Department then investigates the allegations, often in conjunction with other interested agencies. If the evidence supports the allegations, the Justice Department may elect to intervene and take the lead in the enforcement action. Almost all cases in which the Justice Department intervenes result in judgments against or settlements with the defendant. For the relators in our sample, cases took an average of 4.9 years (range, 1 to 9) from filing to closure.

Under the FCA, relators are eligible to receive 15 to 25% of the recovery. The total relator share is set by the government and then divided among relators. The recovery may be withheld if the relator was involved in generating the allegedly fraudulent activity. After attorney's fees and taxes, 5 of the relators in our sample received less than \$1 million in financial recoveries from their case, 13 received between \$1 million and \$5 million, and 7 received more than \$5 million (1 relator did not provide net estimates).

If the government decides not to intervene, the case may remain sealed and is often dismissed. Whistle-blowers may press forward alone (and earn up to 30% of any recovery), but in practice, solo actions rarely result in substantial recoveries.

### Relators' accounts of the experience

#### *Discovery of and initial reactions to the alleged fraud*

The relators we interviewed became aware of the troubling corporate behavior in a variety of ways. Whereas all 4 of the “outsiders” came across it in their normal course of business, the triggering event for most (16 of 22) insiders was a career change — starting at a new company (10 of 16) or being promoted to a new position (6 of 16). Changes in the business environment, such as increased competition or new management after a corporate takeover or merger, also contributed to bringing the alleged fraud to relators' attention. One relator described a time when her employer's highest-earning product faced generic competition: “It wasn't until there were extreme competitive pressures

and negative effects on earnings that the company's marketing practices became much more aggressive.”

Initially, a large proportion (11 of 26) of the relators refused to participate in the corporate actions that led to the suit. Insiders who took this course reported that their job performances began lagging relative to that of their peers, whose sales were enhanced by the marketing schemes. Nearly all (18 of 22) insiders first tried to fix matters internally by talking to their superiors, filing an internal complaint, or both. One explained: “At first it was to the head of my department, the national sales director, and the national marketing director. ... After being shooed aside, I went to the executive vice president over all the divisions of sales and marketing. Then eventually I went to the CEO of the company, the chief medical officer, and the president.” Insiders who voiced concerns were met with assertions that the proposed behavior was legal (4 of 22) and dismissals of their complaints, with accompanying demands that the relators do what they were told (12 of 22).

#### *Motivations*

Although the relators in this sample all ended up using the qui tam mechanism, only six specifically intended to do so. The others fell into the qui tam process after seeking lawyers for other reasons (e.g., unfair employment practices) or after being encouraged to file suit by family or friends. Every relator we interviewed stated that the financial bounty offered under the federal statute had not motivated their participation in the qui tam lawsuit. Reported motivations coalesced around four non-mutually exclusive themes: integrity, altruism or public safety, justice, and self-preservation.

The most common of the themes, integrity (11 of 26 relators), was linked by some relators to their individual personality traits and strong ethical standards. One relator reasoned, “When I lodged my initial complaint with the company, I believed what we were doing was unethical and only technically illegal. This ethical transgression drove my decision. My peers could live with the implications of ‘doing 60 in a 55 mph zone’ because it did indeed seem trivial.

However, my personal betrayal . . . so filled me with shame that I could not live with this seemingly trivial violation.” The relators in this group felt that financial circumstances helped to subvert such ethical standards in their colleagues, saying that most colleagues were unwilling for personal or family reasons to jeopardize their jobs.

A slightly less common theme (7 of 26 relators) involved trying to prevent the fraudulent behavior from posing risks to public health. Most of the relators who described this type of motivation felt they had unique professional experiences or educational backgrounds that gave them a superior grasp of the negative public health implications of the illegal conduct. Some relators (7 of 26) characterized their action in reporting the fraud as emanating from a sense of duty to bring criminals to justice. Many of these relators were new employees who perceived themselves as being outside the fold in their companies.

Finally, several relators (5 of 26) reported fears that the fraudulent behavior would be discovered and would result in legal consequences for them; therefore, blowing the whistle was a way to protect themselves.

#### *The investigation*

Whistle-blowers reported sharing several common experiences during the investigation phase of the litigation. First, most (15 of 26 relators, 14 of 22 insiders) became active players in the investigation. Their involvement included wearing a personal recording device at face-to-face meetings or national conferences, taping phone conversations with colleagues, and copying requested documents or files. In addition, after the Justice Department officially joined the case and began to obtain internal company documents by subpoena, relators were asked to work closely with department representatives to explain the evidence being gathered and help build the case.

Second, the workload and pressure were perceived as intense. One relator estimated spending “thousands of hours” on the case over its 5-year duration; another spent “probably 30 hours a week” during the first few years. Some meetings took place at Justice Department offices, with relators traveling at their own expense;

others occurred unnervingly close to home. One reported that “a typical day could be meeting an FBI agent in a parkway rest stop. Sitting in his car with the windows rolled up. Neither heat nor air conditioning. Getting wired. Running to a meeting. . . . That might happen at 7 for a meeting at 8.” Another said, “I would have FBI agents show up in the office. I told them, the company people, that they were computer people. Luckily they believed it. . . . That’s amusing now after the fact. But at the time they call you in 5 minutes. They say ‘We’re coming onto your campus.’”

Finally, there was widespread criticism of the Justice Department’s collaborative posture, or lack thereof, during various phases of the investigation. Ten relators reported conflict with the investigators, most frequently at the outset. One remarked, “There was always an undertone of ‘How much were we involved in this?’” Relators also complained that “the government doesn’t tell you anything” about the status of the investigation, including when a settlement was imminent. Others were frustrated that “the wheels move really slow” and lamented the years spent waiting in a state of uncertainty.

#### *Personal toll*

The experience of being involved in troubling corporate behavior and a qui tam case had substantial and long-lasting effects for nearly all of the insiders, although no similar problems were reported by any of the four outsiders. Eighteen insiders reported being subjected to various pressures by the company in response to their complaints. A common theme was that the decision to blow the whistle had “put their career on the line.” For at least eight insiders, the financial consequences were reportedly devastating. One said, “I just wasn’t able to get a job. It went longer and longer. Then I lost — I had a rental house that my kids were [using to go] to school. I had to sell the house. Then I had to sell the personal home that I was in. I had my cars repossessed. I just went — financially I went under. Then once you’re financially under? Then no help. Then it really gets difficult. I lost my [pension]. I lost everything. Absolutely everything.”

Financial difficulties often were associated with personal problems. Six relators (all insiders) reported divorces, severe marital strain, or other family conflicts during this time. Thirteen relators reported having stress-related health problems, including shingles, psoriasis, autoimmune disorders, panic attacks, asthma, insomnia, temporomandibular joint disorder, migraine headaches, and generalized anxiety.

#### *Settlement and life afterward*

All relators in our sample received a share of the financial recovery. The amounts received ranged from \$100,000 to \$42 million, with a median of \$3 million (net values, in 2009 dollars). The settlements helped alleviate some of the financial and nonfinancial costs of the litigation. One relator likened his large settlement to “hitting the lottery.” But a majority perceived their net recovery to be small relative to the time they spent on the case and the disruption and damage to their careers. After settlement, none of the 4 outsiders changed jobs, but only 2 of the 22 insiders remained employed in the pharmaceutical industry. One ruefully reported that he “should have taken the bribe,” and another noted that if she “stayed and took stock options” she “would’ve been worth a lot more.” The prevailing sentiment was that the payoff had not been worth the personal cost.

Despite the negative experiences and dissatisfaction with levels of financial recovery, 22 of the 26 relators still felt that what they did was important for ethical and other psychological or spiritual reasons. Relators offered a range of advice for others who might find themselves in similar situations, such as hiring an experienced personal attorney. Many suggested a need to mentally prepare for a process more protracted, stressful, and conflict-ridden, and less financially rewarding, than prospective whistle-blowers might expect.

*Note* This is an abridged version of the published article, omitting references, tables and some text. For a copy of the full article, contact Brian Martin at [bmartin@uow.edu.au](mailto:bmartin@uow.edu.au)

## Obama takes a hard line against leaks to press

Scott Shane

*New York Times*, 12 June 2010, p. A1

WASHINGTON — Hired in 2001 by the National Security Agency to help it catch up with the e-mail and cellphone revolution, Thomas A. Drake became convinced that the government's eavesdroppers were squandering hundreds of millions of dollars on failed programs while ignoring a promising alternative.

Thomas A. Drake, a bureaucrat at the agency, talked to a newspaper; now he's facing prison.

He took his concerns everywhere inside the secret world: to his bosses, to the agency's inspector general, to the Defense Department's inspector general and to the Congressional intelligence committees. But he felt his message was not getting through.

So he contacted a reporter for *The Baltimore Sun*.

Today, because of that decision, Mr. Drake, 53, a veteran intelligence bureaucrat who collected early computers, faces years in prison on 10 felony charges involving the mishandling of classified information and obstruction of justice.

The indictment of Mr. Drake was the latest evidence that the Obama administration is proving more aggressive than the Bush administration in seeking to punish unauthorized leaks.

In 17 months in office, President Obama has already outdone every previous president in pursuing leak prosecutions. His administration has taken actions that might have provoked sharp political criticism for his predecessor, George W. Bush, who was often in public fights with the press.

Mr. Drake was charged in April; in May, an FBI translator was sentenced to 20 months in prison for providing classified documents to a blogger; this week, the Pentagon confirmed the arrest of a 22-year-old Army intelligence analyst suspected of passing a classified video of an American military helicopter shooting Baghdad civilians to the Web site Wikileaks.org.

Meanwhile, the Justice Department has renewed a subpoena in a case involving an alleged leak of classified

information on a bungled attempt to disrupt Iran's nuclear program that was described in *State of War*, a 2006 book by James Risen. The author is a reporter for *The New York Times*. And several press disclosures since Mr. Obama took office have been referred to the Justice Department for investigation, officials said, though it is uncertain whether they will result in criminal cases.

As secret programs proliferated after the 2001 terrorist attacks, Bush administration officials, led by Vice President Dick Cheney, were outspoken in denouncing press disclosures about the CIA's secret prisons and brutal interrogation techniques, and the security agency's eavesdropping inside the United States without warrants.

In fact, Mr. Drake initially drew the attention of investigators because the government believed he might have been a source for the December 2005 article in *The Times* that revealed the wiretapping program.

Describing for the first time the scale of the Bush administration's hunt for the sources of *The Times* article, former officials say 5 prosecutors and 25 FBI agents were assigned to the case. The homes of three other security agency employees and a Congressional aide were searched before investigators raided Mr. Drake's suburban house in November 2007. By then, a series of articles by Siobhan Gorman in *The Baltimore Sun* had quoted NSA insiders about the agency's billion-dollar struggles to remake its lagging technology, and panicky intelligence bosses spoke of a "culture of leaking."



National Security Agency

Though the inquiries began under President Bush, it has fallen to Mr. Obama and his attorney general, Eric H. Holder Jr., to decide whether to prosecute. They have shown no hesitation, even though Mr. Drake is not accused of disclosing the NSA's most

contentious program, that of eavesdropping without warrants.

The Drake case epitomizes the politically charged debate over secrecy and democracy in a capital where the watchdog press is an institution even older than the spy bureaucracy, and where every White House makes its own calculated disclosures of classified information to reporters.

Though he is charged under the Espionage Act, Mr. Drake appears to be a classic whistle-blower whose goal was to strengthen the NSA's ability to catch terrorists, not undermine it. His alleged revelations to Ms. Gorman focused not on the highly secret intelligence the security agency gathers but on what he viewed as its mistaken decisions on costly technology programs called Trailblazer, Turbulence and ThinThread.

"*The Baltimore Sun* stories simply confirmed that the agency was ineptly managed in some respects," said Matthew M. Aid, an intelligence historian and author of *The Secret Sentry*, a history of the NSA. Such revelations hardly damaged national security, Mr. Aid said.

Jesselyn Radack of the Government Accountability Project, a non-profit group that defends whistle-blowers, said the Espionage Act, written in 1917 for the pursuit of spies, should not be used to punish those who expose government missteps. "What gets lost in the calculus is that there's a huge public interest in the disclosure of waste, fraud and abuse," Ms. Radack said. "Hiding it behind [an] alleged classification is not acceptable."

Forced in 2008 out of his job at the National Defense University, where the security agency had assigned him, Mr. Drake took a teaching job at Strayer University. He lost that job after the indictment and now works at an Apple computer store. He spends his evenings, friends say, preparing his defense and pondering the problems of NSA, which still preoccupy him.

*Note: this is an abridged version of the original article in the New York Times.*

### Leakers Australia?

Brian Martin

WHISTLEBLOWERS often suffer harsh and unrelenting reprisals, suggesting how much they threaten people in power. If reprisals are a measure of the threat, then leakers — who make covert disclosures, often to journalists — are undoubtedly seen as dangerous.

Julian Assange, the only visible face of Wikileaks, needs to go into hiding because of the risk to his freedom or even his life (see page 6). Forty years ago, after Daniel Ellsberg leaked the Pentagon Papers, he was called *The Most Dangerous Man in America*, the title of a recent excellent film. Here in Australia, the treatment of Allan Kessing, alleged to have leaked a report on airport security, suggests that governments want to send a signal that such actions will have the gravest consequences.

When whistleblowers go public, they are immediately cut out of the information loop. Leakers, though, can remain in their jobs and keep leaking. That can be more potent than blowing the whistle.

Kathyn Flynn, in a 2006 article in *Journalism Studies*, says that when leakers remain anonymous, the focus stays on corruption rather than the motives of the leaker.

More outlets, besides Wikileaks, are needed for leaked documents. Is there a role for Leakers Australia?

latter half of the 19th century. Published in 1904, *The Shame of the Cities* was one of the earliest books on corruption, where the common factors of corruption were assessed and differences amplified. Although written a century ago, it has important insights for the present. Only the word whistleblower is missing. Steffens himself was the whistleblower.

I discovered Lincoln Steffens by accident; his autobiography is in the New York Times monograph Best One Hundred Books of the Century. He was a journalist with a colourful background not dissimilar to Mark Twain's, and with flair not dissimilar to Twain. In 1902, he was the managing editor of *McClure's* magazine. The owner, S.S. McClure, decided to send Steffens to the coalface to report on suspected and known corruption in Minneapolis, St Louis, Pittsburgh, Philadelphia, Chicago and New York. And Steffens responded. He provided the most comprehensive survey of American corruption at the time. The preface to *The Shame of the Cities* provides his vitae:

Steffens named the givers and receivers of bribes, the vendors and buyers of privilege, and the managers and protectors of condoned criminality. He got from the honest prosecutors and other reform leaders the exact sums which changed hands and the place and time of payment, and all this was published to the nation at large.

example, newly appointed teachers in Philadelphia paid \$120 out of their first \$141 of salary to “the ring”. In Pittsburgh, paving contracts worth \$3.5 million were awarded to the firm of the city's boss. Steffens became the forerunner, if not the patron, of investigative journalists. He identified the shame of Minneapolis, St Louis, Pittsburgh, Philadelphia, Chicago and New York. There was plenty of shame.

The late nineteenth century was an era of rings and boodlers. The ring was the corrupt network of influential citizens and corporations whose business was boodling. Boodling was the extraction of property rights to which the boodlers were not entitled. The property rights were usually in the form of franchises, property and privileges.

Boodling was the equivalent of modern graft, but it was all designed to be legal; usually it was. Public franchises, public works, and public contracts were the principal branches of the rings' business. Steffens blew the whistle on the rings. He documented their history and profiled the rise of the reformers who opposed them. *The Shame of the Cities* is a story of the ebb and flow of corruption.

In a tale of six cities, there will always be differences. The ancestry of the cities was various; Steffens identified St Louis as German, Minneapolis as Scandinavian, Pittsburgh as Scotch-Irish and New York as Irish. But all were American where free Americans were free to usurp the public interest. Corruption flourished, regardless of ancestry. There were some city characteristics to the corruption. In St Louis corruption came from the top, in Minneapolis from the bottom, and in Pittsburgh from both the top and the bottom. The Philadelphia ring, according to Steffens, was upside down like a banyan tree sending its roots from the center in all directions. Minneapolis specialised in police corruption, St Louis in financial corruption and Pittsburgh in financial and police corruption. New York had Tammany Hall and no ring could rival Tammany Hall. It was the embodiment of corruption, where it was honest to be dishonest, and where corruption

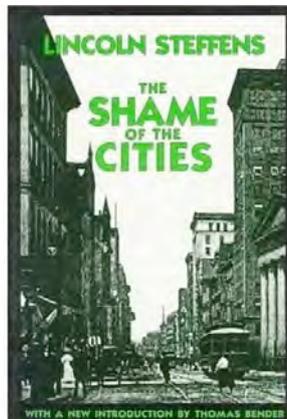
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#### BOOK REVIEW

### *The Shame of the Cities* by Lincoln Steffens

reviewed by Kim Sawyer

SOMETIMES we can learn about corruption by referring to a different era. The principles of corruption never change; only the principals are different. *The Shame of the Cities* was the first book of investigative journalist Lincoln Steffens. It was a compilation of six magazine articles written by Steffens about six American cities, which specialised in corruption in the



Steffens became a 1904 version of Wikileaks. His facts were raw; for

was a democratic entitlement. Only Chicago received a clean rating from Steffens. Chicago had found a way to fight corruption through reform — slow, political reform, by the people, for the people. But this was before Al Capone.



Chicago, 1904

Every city had a corruption boss. They were the bosses of the rings. They were all colourful characters. Corruption requires colour. Minneapolis' boss was Doctor Albert Alonzo Ames, a reprobate of generous proportions. He began with spending, not grafting, but finished as a corruption specialist. In St Louis, the boss was big Ed Butler who began contacts with corporation managers, and so impressed them with his utility that they introduced him to other financiers. Steffens notes "The scandal of his services attracted to him in due course all men who wanted things the city had to give." The boss of Pittsburgh was Christopher Magee who was so determined to make his ring work that he went to Philadelphia to study the ring there. "Boss Magee's idea was not to corrupt the city government, but to be it; not to hire votes in councils, but to own councilmen; and so, having seized control of his organisation, he nominated cheap or dependent men for the select or common councils. Relatives and friends were his first recourse." We can all identify with that. The Magee model of corruption was a model of obligation, the model that many of us have seen today. Just ask an academic. Boss Magee went further. He formed a partnership with another merchant of corruption named Flinn. It was a lifelong partnership, power for Magee and wealth for Flinn. The dual boss system was copied by other cities. Philadelphia had Martin and Porter as their bosses. A corrupt boss needs a back-up. The rings of the cities then depended on bosses; a ring was not a ring without a boss. The bosses were

the CEOs and the members of the ring were the shareholders who were paid dividends. It was the honest citizens who did the paying. They were the losers.

But for every boss, there was an anti-boss. The anti-bosses were reformers. The reformers became the antidote to corruption. The reformers usually began as concerned citizens, akin to Whistleblowers Australia. Their concerns were expressed in newspapers. They formed municipal leagues and eventually they elected public officials to take on the rings. The rings were defeated by the people. But it took more than a quarter of a century to defeat them. Chicago in 1904 was the most successful. The aldermen had been selling Chicago to its most preferred citizens. As Steffens wrote:

Some decent men spoke up and called upon the people to stop it, the people who alone can stop such things. And the people have stopped it; they have beaten boodling.

In most cities, the reformers needed a leader. In St Louis, it was Mr Folk. What an appropriate name for a man of the people! Mr Folk was an accidental reformer, who Steffens described as a man of remarkable equanimity.

When he has laid a course, he steers by it truly, and nothing can excite or divert him. Mr Folk says 99% of the people are honest, only 1% are dishonest. But the one percent is perniciously active. There was no one fit to throw the first stone.

Except Mr Folk. Folk fought Butler, the boss of the St Louis ring, and put him on trial. As Steffens opined,

It was not Edward Butler who was on trial. It was the State and never before did Mr Folk plead so earnestly for this conception of his work.

And that should be the conception of all corruption trials and all inquiries into corruption. When the Australian Senate committees inquired into whistleblowing in 1994 and 1995, and the Constitutional and Legal Affairs Committee of the House of Represen-

tatives inquired into whistleblowing in 2008, it was the state that was on trial. We needed a Mr Folk.

Defeat of the rings was never straightforward. It was always one step forward but often two steps backward. In Pittsburgh, for example, the reformers appealed to the voters to overturn the ring. In 1896, they formed a Municipal League and launched upon a campaign to beat the ring at the next election. The reformers campaigned, but were defeated. Defeat for corruption fighters is difficult to accept. In Pittsburgh, the reformers attributed defeat to the indifference of the citizenry. All that was required for the ring to prevail was for the good citizens to be indifferent. The reformers were resigned to the problem: "All we have got to do is to begin all over again," a sentiment that we can all endorse. The reformers learnt from other cities, just as the rings learnt from each other. Then, as now, the export and import of corruption was important to its survival. The Chicago and St Louis rings would exchange ideas as to how to do the business of corruption. When the distances were too great, they got ideas through what Steffens described as the "mysterious channels which run all through the World of Graft." So, in 1904, after nearly forty years of corruption and anti-corruption, Steffens gave his rating on the shame of each of the cities.

Philadelphia is simply the most corrupt and the most contented. Minneapolis has cleaned up, Pittsburgh has tried to, New York fights every other election, Chicago fights all the time. Even St Louis has begun to stir. Philadelphia is proud; good people there defend corruption and boast of their machine.

That was the state of play in 1904.

When Lincoln Steffens blew the whistle on the shame of six American cities, he could have been blowing the whistle on corruption today. The root of the problem is the same. Corruption then, as now, refers to the usurping of the public interest by the private interests of the few. The few in 1904 were called rings, and their business was called boodling. Today, the few are many and they are the tightly

controlled networks which contract preferentially, decide preferentially, and employ preferentially. Those networks are not dissimilar to the rings of Pittsburgh. They are less visible, more subtle, but their modus operandi is the same. Corruption today has the same characters as in Steffens' era. It has the same silent regulators, the same bystanders, and the same reformers, but the reformers today are the whistleblowers. Who is missing? There are very few Mr Folks, but even fewer Lincoln Steffens. That is our shame.

*The Shame of the Cities* was originally published by Sagamore Press, New York. It is available in some libraries and for purchase online.

Kim Sawyer is a long-time member of Whistleblowers Australia.

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## One step forward, two steps back: NSW Protected Disclosures Act 1994

Cynthia Kardell

I RECENTLY received a letter from the chair of the NSW parliamentary committee on the Independent Commission Against Corruption (ICAC) regarding the Keneally government's intention to introduce a bill to implement the recommendations it supports, as set out in their report entitled "Protection of Public Sector Whistleblower Employees." It's on the net if you're interested.

The origins of this report go back to June 2008, when the parliament resolved to refer an inquiry into the operation and effect of the Protected Disclosures Act 1994 (the Act) to the ICAC committee as a consequence of Gillian Sneddon blowing the whistle on former MP, Milton Orkopoulos. (Orkopoulos is doing time in prison for the sexual abuse of young boys. Gillian Sneddon is still in the court system seeking compensation.)

The initial report languished so long on Premier Iemma's desk that he apparently decided it'd be better if they did it all again. The second time around the committee produced an "issues" paper, which in turn morphed

into the current report. Whistleblowers Australia diehards like Peter Bowden and me have turned out for each gig. The origins of the act itself go back to the (then) Liberal government trying to limit the reach of the bill it was introducing and a Labor Opposition which was successful in pushing the government into providing for whistleblowers to be able to go to the media in limited circumstances. At the time, you could've been forgiven for being optimistic about any future Labor government.

Particularly as, at the same time, the federal Labor government under prime minister Paul Keating had decided to act on the farsighted findings of the two Senate inquiries into whistleblowing: many of you will recall the two reports entitled "In the Public Interest" and "The Public Interest Re-Visited." Alas, John Howard won in the 1996 federal election and whistleblower protection was not, after all, a core promise.

Everything that has happened in NSW since then has largely been a backward step: away from the earlier groundbreaking Labor reforms in opposition, because of the state Labor government's steadfast resistance to doing anything other than to pick around at the edges of a fundamentally unsound act.

If the current set of recommendations becomes law it will turn the clock back by fifteen years, because this government actually intends to narrow the whistleblower's opportunities and protections.

Instead of amending the act to make the character of the public interest disclosure the key to providing protection, it is strengthening the existing focus on the character and credibility of the whistleblower, by entrenching requirements like honest and reasonable belief.

You might say, well how else does one know who should be protected? I think it is simple. The focus has to be on the quality and character of the disclosure, not on the whistleblower. For example, if the disclosure (mostly) pursues an outcome *on behalf of* the public's interest; and not the whistleblower's personal interest or gain, then the disclosure *is* a public interest disclosure and its maker should be protected. That is, the disclosure is a

public interest disclosure, because the person making the disclosure does so, as an agent or relator.

You might look to the US False Claims acts for examples of the centuries old common law concept of agent or relator in "qui tam" actions. Qui tam is an abbreviation for the phrase "qui tam domino rege quam pro se ipso in hac parte sequitur" meaning "he sues in this matter *for* the king *as well as* for himself."

In 1994 the NSW Labor opposition showed foresight and courage when it pushed for the political compromises that, for example, allowed whistleblowers to go to the media. I've written to say Ms Keneally should be taking the opportunity presented by being in government to do something of the same quality again. Something courageous! Something in the public's interest and not the short term party political interest of only being *seen* to be doing something.

I'm not holding my breath.

Cynthia Kardell is national secretary of Whistleblowers Australia.

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## Comments on Greg McMahon's critique

AJ Brown



AJ Brown

THANK YOU as always to Greg McMahon for continuing to point out what he perceives as limitations in our research and report (*The Whistle*, April). I fully agree that Whistleblowers Australia and interested individuals should form their own judgments about the quality and usefulness of any research. Where there are limitations to

the research, these have been readily acknowledged as is standard for any research project. Any research methodology always has its own limitations, it is a question of choices in research design given the issues being focused on, resources, access to participants and so on. The important thing is transparency with respect to these.

Prior to publishing our first report in book form, we put it out for comment as a public draft, for a substantial period, and made many adjustments to the analysis in order to improve its transparency and reduce the potential for misinterpretation — including in response to a large number of very substantial and useful suggestions from a variety of members of Whistleblowers Australia.

Greg's basic concern seems to be that new systems and procedures will attempt to manage disclosures (internal or external is not clear) about more serious, complex and systemic wrongdoing, in the same way as arguably less serious, lower-level wrongdoing. This is a legitimate concern and worth highlighting, even though it does not actually reflect a limitation in the research or recommendations.

What we do know is that public agencies have no excuse *not* to put more effort into protecting and supporting a wide range of internal whistleblowers, and are often capable of doing so even when the disclosures are quite serious and involve senior people in organisations — even government ministers (there is one in jail now). We stand by the results that support this finding and associated recommendations, because it increases the responsibility of agencies and governments to recognise and discharge their duty of care — both to their own employees and the public — to deal seriously with whistleblowing concerns and not just put employee welfare in the “too hard” basket, or leave whistleblowers to sink or swim on the basis that they are just persistent, whingeing troublemakers who are never satisfied and only have themselves to blame for whatever befalls them. This is a stereotype with which we are all familiar, and we are pleased to have generated a serious body of data that demonstrates it provides no

excuse for agencies and governments to avoid their responsibilities.

At the same time, Greg and others are right that there will always be some cases that are too serious and complex for an agency to be able to handle by itself, or where internal whistleblower support systems are insufficient or fail, or where the whistleblower has to go outside and cannot realistically expect much support from authorities in the organisation — and our research never suggests otherwise. These are the reasons why legal protection for public whistleblowing when justified, and compensation for whistleblowers who come off badly, remain such vital issues. It is also why the roles of external watchdog agencies are important. This is thoroughly supported by our research and very prominent in our recommendations.

Best of luck in all your efforts.

AJ Brown is Professor of Public Law at Griffith University, Queensland, and leader of the Whistling While They Work project.

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#### BOOK REVIEW

### *Dirty Work* by Glen McNamara

reviewed by Brian Martin

Glen McNamara was not a whistleblower. He was just doing his job. He worked as an undercover cop in Sydney's Kings Cross in the late 1980s. He was good at his work — and because he was effective against criminals, he was treated just like a whistleblower.

McNamara tells his story in his book *Dirty Work*. He starts with his earlier police work. This is vivid and eye-opening, with many episodes revealing the sordid behaviours encountered by police in a crime-ridden area of Sydney.

Then came McNamara's undercover work. He gives a detailed account of his efforts targeting paedophiles who manufactured and sold drugs to help maintain their sexual activities with young boys. The paedophiles' lifestyle was expensive because they needed to pay corrupt police for protection. Some

of the police were involved in the drug trade too.

Several of the names later became well known, in particular paedophiles Colin Fisk and Dolly Dunn and policeman Larry Churchill. McNamara was dealing with them before their public notoriety.



Colin Fisk

McNamara built up trust among his targets. They thought he was another bent cop able to make big drug deals. To obtain evidence against the criminals — paedophiles and drug dealers and corrupt cops — McNamara needed the support of a special police unit, the Internal Security Unit (ISU). It provided him with covert recording devices and maintained surveillance on key figures.

The trouble was that McNamara's identity was known within the ISU and the ISU's security was slack. Someone there leaked the information to Churchill. After that, McNamara was a marked man — and his life was at risk.

Due to his experiences, McNamara became highly cynical about the police. Most fell into one of two categories: those who were corrupt and those who would do nothing against the corrupt ones.

Most distressing of all was when McNamara trusted someone, and that trust was violated. McNamara looked up to one experienced officer as the epitome of a straight cop — and was betrayed by him.

When McNamara learned that his undercover role had been revealed to corrupt cops, he initially still trusted a few. After receiving death threats over the phone, the ISU arranged a new phone number for him — but it soon was exposed in an ad in the *Police News*. So McNamara personally arranged for another phone number using a false name, and had no problems after that.

McNamara requested additional weapons from the police to defend himself. Before long, he was asked to turn in the only weapon he had. His enemies obviously had learned about his request and had the connections to thwart him and, worse, put him in a more vulnerable position. So McNamara obtained weapons via his father.

In the midst of this tense period, McNamara arranged for a trip to the US — a holiday with his wife. To obtain leave from his job, he had to provide a detailed itinerary. While in Los Angeles, he received word of a plot to kill him while in the US. His itinerary, supposedly closely guarded, had gotten in the hands of his enemies. This news was incredibly unnerving to McNamara but had a more serious effect on his wife, who miscarried.

For whistleblowers who are part of a deeply corrupt culture, *Dirty Work* has lessons. One of them, as I've mentioned, is to trust no one, and organise protection through channels outside the workplace. As McNamara puts it:

I was in a process of change. Unlearning the lessons of a lifetime. I now knew that I could not rely on Police to help me in a time of need and I could not trust them with sensitive information. (p. 185).

Information from McNamara's undercover work was used to arrest a few cops, so what did they do? They said McNamara was himself corrupt. He spent days being grilled about false allegations. The lesson for whistleblowers is a familiar one: when you expose corruption, expect to be labelled corrupt yourself. McNamara, luckily, was able to ward off the allegations because his accusers were unable to formulate a solid case.

McNamara wanted justice to be done, but it wasn't easy. Although his undercover work had resulted in the seizure of numerous videotapes made by Dolly Dunn of his sex with young boys, Dunn was not charged with any sexual offences. The story about what happened to Dunn, Colin Fisk and corrupt police is convoluted. Suffice it to say that the network of corrupt cops hindered any serious action against either paedophilia or police corruption.



Robert "Dolly" Dunn. Photo: Reuters

McNamara is cynical about media coverage of police corruption. He says that those he describes as lazy journalists put out stories, based on their police contacts, that missed the real issues, without checking facts themselves. McNamara had personal experience of this: after the arrest of Churchill, headlines came out saying that a "supergrass" was involved. A supergrass is a member of a criminal syndicate who gives evidence for the police. The media stories were referring to McNamara — not by name, but recognisably to police — as a criminal rather than an undercover cop. Police did nothing to correct the misleading impression.

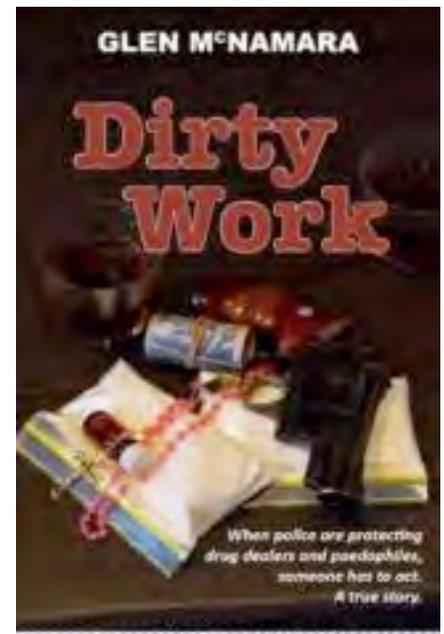
The media were being force fed the Police line that they were targeting suspect and corrupt officers with covert proactive investigations and the punch line was that the good guys were winning the fight. ... the public was reassured that even though Churchill was a criminal,

everything else was perfect because Churchill had been caught and there would be no more Police corruption because of his capture. (p. 206)

The lesson from this is not to trust media stories about police corruption. You may be missing the true story. To get something closer to the true story, you need to read books like *Dirty Work*. But you may need to wait.

*Dirty Work* tells about events more than 20 years ago. One advantage of this is that subsequent events — such as the NSW Police Royal Commission in the mid 1990s and prosecutions of some key figures such as Dolly Dunn — enable some of the threads of the story to be completed.

But much still remains unsaid. McNamara learned about paedophilia, drug dealing and police corruption at high levels. But only some names can be named, some because they have died, for example John Marsden, solicitor and member of the Police Board, who died of cancer, and Frank Arkell, lord mayor of Wollongong, who was murdered, each accused of paedophilia. But others are alive and could sue. *Dirty Work* is a true story, but there is still enough unaddressed corruption to ensure that not all truths can yet be told.



Glen McNamara, *Dirty Work* (Sydney: New Holland, 2010), \$29.95

Brian Martin is editor of *The Whistle*.



*Whistleblowers Australia*

# Watchdogs and whistleblowers

National conference on whistleblowing  
Whistleblowers Australia annual general meeting

Emmanuel College, Sir William MacGregor Drive, St Lucia Q 4067

Saturday-Sunday 27–28 November 2010

CONFERENCE SPEAKERS

**The media watchdog — Alan Jones AO**

Media commentator

**The integrity commissions — The Hon Barry O’Keefe AM, QC**

Former NSW Supreme Court justice and NSW ICAC Chairman

**The ombudsman’s office — Professor Anita Stuhmcke**

Law Faculty, University of Technology Sydney

**The courts — The Hon Bill Pincus QC**

Former Federal Court and Foundation Queensland Appeal Court justice,  
Royal Commissioner, CJC Commissioner and Acting CMC Chair

**The parliamentary committee — The Hon Ray Halligan**

Former chair, Western Australia Parliamentary Corruption and Crime Committee

**The whistleblower experience with watchdogs in Queensland  
— Col Dillon**

Foundation President of Whistleblowers Action Group (WAG) Queensland, 1994

<i>WAG workshops Thursday 25 November</i>	<i>WAG workshops Friday 26 November</i>
9.00–12.30	9.00–12.30
Dealing with the bureaucracy Professor Brian Martin	Dealing with stress Anne McMahon
1.30–4.30	1.30–4.30
Dealing with bullying Dr Bill Wilkie	Dealing with trips and traps Greg McMahon

Conference, \$60; AGM, \$25; workshops, \$60 per day

Registration: phone 07 3390 3912 or write PO Box 859, Kenmore Q 4069

Please supply name, address, telephone and email

Accommodation available at Emmanuel College at \$60 B&B; phone (07) 3871 9360; ask for Karla

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## Whistleblowers Australia contacts

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

### New South Wales

**“Caring & sharing” meetings** We listen to your story, provide feedback and possibly guidance for your next few steps. Held 7.00pm on the 2nd and 4th Tuesday nights of each month, Presbyterian Church (Crypt), 7-A Campbell Street, Balmain 2041

**Contact** Cynthia Kardell, phone 02 9484 6895, fax 02 9481 4431, ckardell@iprimus.com.au; Peter Bennett, phone 07 6679 3851, bennettpp@optusnet.com.au  
**Website** <http://www.whistleblowers.org.au/>

### Goulburn region contact

Rob Cumming, phone 0428 483 155.

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## Whistleblowers Australia conference

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See previous page for details

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## Whistleblowers must be protected

(letter to the editor)

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The story of Deborah Locke and Glen McNamara [police whistleblowers] should dismay us, but unless we start taking protection of whistleblowers seriously we are condemned to live with the scourge of corruption (*Sydney Morning Herald*, “Dangerous days in the Cross,” April 7). Just before Christmas the long-awaited report of the ICAC [Independent Commission Against Corruption] committee into the protection of public sector whistleblowers was released, to practically no media attention.

It is 3.5 years since the *Herald* made public the fate of Gillian Sneddon, who had blown the whistle on the child sex crimes that sent Milton Orkopoulos to jail (I also worked for Orkopoulos). Calls for an inquiry into disclosures within Parliament of those allegations were deflected to that committee. After 18 months it found it had no jurisdiction to examine the matter, and neglected to refer it to an avenue of proper inquiry. No public sector whistleblower was called to give evidence.

While those who report corruption face having their lives destroyed for doing the right thing we will never enjoy proper accountability of those in charge of law and order.

**Linda Michalak** Caves Beach

*Sydney Morning Herald*, 9 April 2010, p. 12

## Whistleblowers Australia membership

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

To subscribe to *The Whistle* but not join WBA, the annual subscription fee is \$25.

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