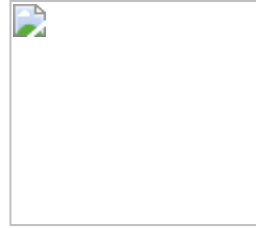


The Whistle

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Parliamentary embezzler blows whistle on MPs

Stefanie Balough, *Australian*, 8 January 1998, p. 5.

The NSW parliamentary clerk who had a holiday overseas at the taxpayers' expense has rolled over to the ICAC and is assisting its investigations into alleged MP travel rorts.

The revelation that former public servant Terry Charles Spence had turned whistleblower came yesterday during his sentencing hearing in the NSW District Court.

However, Spence will not receive a discounted sentence unless ICAC breaks its silence on how helpful Spence was to its investigations.

Spence, who controlled travel expenses in the NSW Parliament, has admitted illegally using a Legislative Council Visa card, as well as shouting himself and a close male friend a \$14,000 overseas holiday last year courtesy of the Government's travel account.

The whirlwind jaunt took in the cities of Los Angeles, Las Vegas, London and New York.

The former senior accounts clerk took friend Craig Childs on the taxpayer-funded holiday, leaving his pregnant wife Deborah behind.

During his sentencing hearing yesterday, it was revealed Spence, 32, has been assisting the Independent Commission Against Corruption's investigation into the misuse of parliamentary travel allowances.

A letter from the ICAC, tendered to the court, said Spence had provided information which had helped the corruption body "identify possible misuse by certain persons".

It was revealed in November that the ICAC was examining various allegations of expenses rorting by NSW parliamentarians. No charges have been laid and the investigation is expected to wrap-up in late April.

Acting Judge Kenneth Horler yesterday adjourned Spence's hearing in light of the new information.

He said if Spence had assisted the ICAC in "a real way", he was legally entitled to a discounted sentence.

Spence has pleaded guilty to six charges: four counts of obtaining financial advantage by deception, larceny by a public servant and embezzlement. He has pleaded not guilty to one charge of embezzlement.

A statement of facts showed that when Spence told his boss, NSW Parliament financial controller Greg McGill, he was going on study leave, Spence was actually packing his bags for a 5pm Qantas flight to Los Angeles with Mr Childs on June 4 last year. He was to return to work eight days later but instead telephoned Mr McGill, saying he had to go to hospital because his pregnant wife was sick.

The following Monday, Mr McGill discovered Spence and Mr Craig had flown to the US after Spence booked two tickets through Qantas Government Travel.

Spence had illegally charged the cost of the two tickets - \$14,166 - to the Government's travel account.

He also illegally used a NSW Legislative Assembly ANZ Visa card for a number of cash transactions throughout Sydney, the NSW Hunter Valley region, the US and England.

Spence has also admitted to embezzling a parliamentary employee's \$1000 cash advance, as well as falsely cashing a \$1000 Legislative Council cheque.

He was arrested in July, on his return to Sydney from Atlanta.

Sally Knox, for the Crown, told Acting Judge Horler yesterday that Spence had so far repaid \$1323.11 but there was still an outstanding debt of \$14,842.89.

Spence's lawyer, Naomi Hamilton, said her client, who had since landed another job in accounts, was "doing all he can" to repay the money.

Ms Hamilton said Spence was assisting financially with his newborn child, paying for psychotherapy and had other "significant

debts" to repay.

Spence will be sentenced on April 22.

FBI whistleblower wins big

***Chemical and Engineering News*, Vol. 76,
No. 11, 16 March 1998, p. 23.**

Frederic W. Whitehurst, the 50-year-old Ph.D. chemist whose whistleblowing led to a major overhaul of the Federal Bureau of Investigation's crime lab, has reached an out-of-court settlement with the FBI for more than US\$1.1 million and has resigned from the bureau.

The settlement will provide Whitehurst with the salary and pension he would have received had he remained at the FBI until the bureau's normal retirement age of 57. In addition, the FBI has agreed to pay his legal fees of about US\$258,000.

Whitehurst had been on leave with pay since January 1997 and was suing the bureau for retaliation triggered, he claimed, by his persistent charges of sloppy lab practices and policies. As part of the settlement, Whitehurst dropped this lawsuit. Separate charges - that the FBI and the Justice Department violated Whitehurst's rights under the Federal Privacy Act and the Freedom of Information Act - also have been settled out of court for US\$300,000.

One of his attorneys, Stephen M. Kohn, tells C&EN that the settlement "is a great victory for forensic integrity. It will allow Fred to go on the outside to ensure that forensics are not misused, and it is a recognition by the government that Fred had legitimate claims."

Michael R. Bromwich, the Justice Department's inspector general, looked into Whitehurst's allegations and last April issued a voluminous report supporting some of them (C&EN, June 16, 1997, page 25). Among his findings, Bromwich noted that shoddy lab practices had resulted in flawed testimony in such major high-profile cases as the Oklahoma City bombing.

Bromwich, however, was unable to substantiate most of Whitehurst's charges, including those of alleged gross misconduct by fellow lab examiners. These unverifiable allegations harmed a lot of people and left a residual of bad blood, Bromwich concluded, which led him to recommend that Whitehurst not be returned to the crime lab.

As part of the settlement agreement, Whitehurst returned to the crime lab on Feb. 27 and officially resigned from the FBI the next

day.

A time for reflection

Feliks Perera

To all those who have supported the cause of whistleblowing and actively offered support to whistleblowers, this is time for taking stock. It is time for reflection, reflecting on what was achieved over the past year. It is time for an honest assessment of what your individual contribution has meant to both the cause of whistleblowing, and also to those who have taken a stand against corruption and malpractice.

The concept of exposing corruption from within still has a very bad connotation in our society. It is all to do with a misguided culture, owing some sort of false allegiance to those who want to have their own way to nurture nothing more than their greed and dishonesty. Therefore, our primary task should be to spread the word that the old culture has to go, making way for new thinking. It is important for all of us to act honestly, whether we are guided by our religious beliefs, the moral standards we have been brought up with or adopted, or the philosophy by which we have decided to live and interact with the society at large. It also calls for an emphasis on having good communication, and speaking out whenever something around you is making you uncomfortable. It is also accepting, accommodating and forgiving all those who have fallen by the wayside. It is certainly not ruthlessly weeding out those who have different views on how the world should operate. It also calls for an abandonment of being punitive, calling for punishment for every little error. Finally, it calls for practice by example, breaking ground, setting ground. Speaking out loudly that honesty is good, it makes you feel good, it makes others feel safe.

In this context of reflection, something more must be said in support of our dedication and actions for the future - about the victims and the victimisers. Let us deal with the victims. Most victims of retaliation against whistleblowing have suffered horrendously, because they have gone against a very strong culture that rules all interactions in our daily lives. They need our unqualified support, but never our pity. Whistleblowers never take a stand to receive our very generous pity. They take a stand because something is making them very uncomfortable and unsafe. They are also concerned about the innocent people who may suffer from the misguided and corrupt actions. Our contribution to the whistleblower depends in what circumstances we are involved with him/her. Even if we are not directly involved with the person or the issue, we can render our unqualified support by writing or speaking out in support of the stand the person has taken. This can be by writing or talking to the person directly, offering our support, confirming that the stand taken was the appropriate one, and

believing in the benefits that will flow from the action taken. It is important for the whistleblower to believe that he/she is not alone, and that there are several others who would have taken the same course of action spontaneously. It also affords a committed stand on the issue at hand, and educates oneself on all matters pertaining to the dispute. Your contribution must transcend all emotions, should be based on accepted principles, and a genuine concern for the greater good.

Another important issue we must reflect on is that of the whistleblower being "a victim." Our unqualified, committed and constant support is what will empower whistleblower not to be a victim. Taking an active role in one's own care is what we the supporters should always encourage. Fighting back to maintain one's emotional well-being and self-esteem is not only healthy, but also paramount in the fight to move on from the hurt, anger and devaluation suffered. Stepping out from the role of a victim is what should always be encouraged. Taking control of the future, making a new future in a different direction is what needs the greatest support. It not only helps the whistleblower in the right direction to claim his/her shattered life, but is also the correct step towards a healthy and more productive life. The important lesson we all need to learn is that there is life after all disasters. Too many cases have shown that many people will go to great lengths not to take personal responsibility to move on. Those who support the cause of whistleblowers must be there to lend support to those victimised to move on. Moving on does not mean abandoning the fight. The battle does not end if the whistleblower loses his/her job. The voice of dissent should continue. Turning people into victims has been rather popular in this country. It encourages people to believe that they have no power, that others have power over them, and their actions and destiny are decided by others, etc. Learned helplessness is a dangerous disease, and should be discouraged. Often it makes the victims feel as if they are suffering from a disease, waiting for some outside source to perform a cure. The need or the willingness to be a victim must be discouraged. It should not be a way to elicit support or help from a world otherwise devoid of any caring or concern. To view the victimisation caused by the stand one took is both destructive and disempowering. The victimisation comes from somebody's inability to accept the wrongdoing for what it is. Whistleblowers should not remain victims; they must move on.

Our contribution to the concept of whistleblowing and to whistleblowers must not only be a healthy one, but one based on sound principles of science. Those of us who profess to support whistleblowers have an obligation to help them to be a victim no more. We have to open other avenues for them to move on. Their singular contribution in taking a stand against corruption must always be valued. The world moves on, and life goes on. Even if the whistleblowers' actions were not recognised, whistleblowers must move on. There is no turning back. Are we prepared to dedicate ourselves and our actions to achieve this?

Comment on stress

Feliks Perera

I would like to add the following to the very fine article by Dr Jean Lennane on the topic of stress (*The Whistle*, May 1998).

Stress and resulting damage have been extensively studied by very prominent researchers. The amount of evidence in the mainstream data-driven science is quite exhaustive. It is time, therefore, that the law and the legal profession took serious note of the consequences of stress. Creating any form of unnecessary stress in any environment is nothing short of a calculated physical and emotional assault on a person. And it should not only be viewed as such but dealt with as such. Test cases should be mounted in our court system, and backed by authoritative medical research, in order to establish civil and criminal damages. Damages for stress have already been established in divorce proceedings in the US. It is time we took the bold step of making our communities realise that there is a new weapon of destruction.

It appears that we are unable to deal with this issue of stress as we cannot physically see it. It is not like a gun or a knife or some chemical that can be written in descriptive terms into the statute books. So far the law has not shown a great success in dealing with pain and suffering caused by crimes already in the statute books. This is creating history - how long will it take the lawmakers to recognise the effects of stress in contributing to severe illness? Is this because the very acknowledgment will cause a flood of actions for compensation from genuine victims and also from malingers? Irrespective of the social consequences, scientific data cannot and must not be ignored. Our cleverness is measured by the acceptance of scientific findings and moving on with them, not denying or hiding from the truths. Every effort must be made to force the lawmakers to acknowledge what the scientific community is saying. There has to be a genuine effort to work towards reducing the levels of stress in our everyday lives.

We are confronted with stress every minute of our lives. Our bodies can cope with a certain amount of stress, and it would not be wrong to say that we need some stress in order to make us more creative and productive. That is where it stops. Human beings are not machines; stress gradually breaks us down. We do not see the gradual degeneration, but it slowly happens. Sometimes we are unable to help ourselves, and those around us may only offer us pity. In this climate it is rather surprising that we have not started educating our communities on this concept of stress and how to cope and deal with it. It is important that we draw safe parameters in our daily interactions, and also learn and practise simple methods of reducing stress in our homes, work places, etc. Our lines of communication must always be open and we must develop good communication skills at all levels in order to express how we feel and what we need from our immediate environment that would nurture us and make us feel safe and good. Similarly, we must practise these principles enabling those who interact with us to feel safe, good and validated. In the current climate, our society has

encouraged conflict as a way of resolving issues. Let the best man win. And we have gone to great lengths to win, never caring for the long path of destruction that was left behind. We also need to learn to care about people, how we treat them. We need to create a safe environment for others to grow and feel accepted. Tragically, in our misguided wisdom, we have abandoned the simple rules of living and interaction. We have gone to great lengths to cause stress - in the home we have parents in one corner and the children in the opposite corner, in the work place we have the employees and the employers, both equally suspicious of each other. Our society cannot advance on this path - this will lead to nowhere but destruction and total despair. We create and contribute to our own misery. The little conspiracies and schemes that we so meticulously weave might turn out to be the very recipe for our own destruction. We need to constantly keep in mind the Mitochondrial Eve Principle - that we all came from one woman who walked the African savanna many thousands of years ago. Our evil actions towards our own kind just show that we have lost it all. We have lost the path to a constructive and productive future.

Whistleblowers must be particularly aware of this before they take a stand to speak out against corruption and malpractices. Society does not look kindly at those who want to 'squeal/dob'. Justice and punishment is swift. Whistleblowers are ostracised, looked down upon with contempt, castigated for letting the side down, creating disruption, destroying trust and confidence, being a bad influence, etc. The real truth is far from it. Whistleblowers are the simple checks and balances we need in our everyday life to keep us on the right path. They are the alarm bells that go off whenever we are down a wrong path to destruction dragging a few hundred with us. We must inform ourselves of the great dissenters in modern history. John Wyclif, Jan Hus, Martin Luther and others took a stand and changed the course of history forever. Whistleblowers must clearly weight the hell that might confront them once they take a stand. They need to take stock to ascertain whether they are capable of coping with all the stress that will follow. It is the internalising of the backlash that causes stress. Whistleblowers certainly have the conviction and moral strength to take the stand to speak out. Do they need to make sure that those around them see it as they see it? Do you take a stand and move on, or go on to fight to bring things back to normal? In my experience things will never be normal once you have taken a stand. The backlash will surely gather momentum. What do you do?

These hard questions can only be answered by the person facing them. Health and sanity are the most precious things anybody has in this journey of life. How do you protect and preserve them? A great bank balance or a good retirement fund does not even matter. It cushions the blow, but does nothing to alleviate the suffering. Whistleblowers should not look at themselves as martyrs or be viewed as the voice in the wilderness, making straight the paths for the rest of us to travel. All of us have a lesson to learn from those who speak out against corruption and malpractices. We have a moral and human obligation to lend our support to the whistleblower. It should be done today. Tomorrow or next week might be too late. Stress will surely destroy yet another lone voice that could not cope with the pain.

Who watches the watchdogs?

Lessons from ICAC

Jean Lennane

Whistleblowers in other states sometimes envy NSW its "Independent Commission Against Corruption" (ICAC). But there are grave doubts about ICAC - doubts that probably apply to any standing anti-corruption body. There are valuable lessons here for all of us, especially WBs who think a potentially effective watchdog will provide the answers they are looking for.

Question 1: Will any "anti-corruption" staff be corrupt? Will the boss care?

Whistleblowers Australia (WBA)'s doubts about ICAC started under its first Commissioner, Ian Temby, when we heard from a number of whistleblowers that police they knew to be corrupt were working there. Mr Temby refused to meet us, and passed the information on to an underling - who for all he knew could have been corrupt. Apart from establishing that ICAC didn't like or welcome whistleblowers, we were no further ahead. The Police Royal Commission was set up 2 or 3 years later. One of the conditions set by founder Independent NSW MP John Hatton was that it had no NSW police on its staff. It found - surprise! - corrupt NSW police working at ICAC.

Lesson 1: Anti-corruption bodies should not employ police or ex-police from the state where they operate.

Question 2: Will the "anti-corruption" body have a political bias?

Commissioner Temby was known to have a Labor past, but served most of his term under a Liberal government. Liberals complained that he ignored the excesses of the previous (Labor) government, concentrating instead on the governing Liberals. His crowning achievement - from a pretty meagre selection - was to "get" Liberal Premier Nick Greiner over a taxpayer-funded job offer that would have got a troublesome ex-Liberal-turned-independent MP out of the way.

Current Commissioner Barry O'Keefe, ex-Liberal mayor of Mosman, is gunning for Labor MPs, and has a list of some 14 MPs being investigated for travel rorts - all Labor. One of his key senior staff members ran unsuccessfully for a Liberal pre-selection.

It seems a little unlikely that travel rorts in NSW would be confined to one party, or that they would have stopped 7 years ago, when those being investigated allegedly occurred. It is also worth noting the sort of money involved in the rorts - a few hundred to a couple of thousand dollars. This is peanuts compared with the rorts most WBs are trying to get investigated; and see Q6 below.

Lesson 2: Anti-corruption body heads and senior staff must be apolitical.

Question 3: Will the "anti-corruption" body investigate all or most complaints?

ICAC never has. At its worst it was investigating less than 1% of complaints received, and referring the rest back to the department that was being complained about! It then sends letters out to complainant and complainees saying simply that they have declined to take the matter further, without saying why. The accused department/person can then claim to have been "cleared by ICAC", which in effect encourages rather than discourages corruption. Under both its heads it has seemed most reluctant to go after serious corruption at senior levels in government departments, and has almost completely avoided any investigation of organised crime.

Lesson 3: There should be a requirement for the body to investigate a set minimum percentage of complaints received, to make the ratio public every few months, to notify all complainants of the current ratio at the time they make their complaint, and to state their reasons in any letters saying they are declining to investigate (e.g. lack of resources, not doing local government this year). Heads of departments where corruption is found should be held accountable.

Question 4: Will the "anti-corruption" body protect whistleblowers, including its own?

ICAC has a bad name among NSW whistleblowers. After ten years of its operations, we are aware of only one WB, out of over 100, who was even partly satisfied. Some WBs have suffered catastrophic damage from their confidentiality being blown when ICAC referred the matter back to the department they had complained about. Commissioner O'Keefe has always dismissed as nonsense our surveys and anecdotal evidence on this. Indeed his response to any criticism has often been a letter appearing to threaten defamation action. However late in 1996 ICAC did its own survey of people who had given information to ICAC under the NSW Protected Disclosures Act. (This Act supposedly protects whistleblowers, but it has never been clear who is to implement the protection. We think it's ICAC; they don't. In practice no body is doing anything to protect whistleblowers.) According to leaks from

within ICAC, the initial report on the results of their survey were "damning". The researcher had to rewrite a more acceptable version, which was eventually released late last year, containing no hard data at all. Our application under FOI for the original draft report has been refused. We hope ICAC's attitude to external WBs might improve after the survey fiasco. However their reaction to their own staff who blew the whistle on fraudulent misuse of ICAC funds a couple of years ago has been a classic. Two of three WBs were forced out, the remaining one has been significantly disadvantaged, and allegedly corrupt staff have been promoted.

Lesson 4: Since WBs are the life-blood of any anti-corruption body, their protection and satisfaction has to be a priority. The body should set up a specific unit for this, as the NSW Police Royal Commission did, the NSW Police Service continues to do, and the NSW Ombudsman is considering doing. There must be an ongoing system of surveying consumer satisfaction among WBs, conducted automatically (e.g. by a questionnaire sent out to all WBs six months after they first register a complaint). This research must be done by an independent body such as a university, and published in full each year. It should include any ICAC staff who blow the whistle on ICAC itself, published in a separate and identifiable section of the report. Investigation of internal WB complaints must be done by an independent body such as the Ombudsman.

Question 5: Will the "anti-corruption" body's head understand and avoid conflicts of interest?

There have been a number of concerns about Mr O'Keefe in this regard. One is his being president of the NSW National Trust, which has had a fairly substantial matter referred to and investigated by ICAC during his term as Commissioner. He claimed that conflict was avoided by his delegating the investigation. Another is his continued membership of the somewhat secret Order of St Lazarus, of which he is a Commander. Residents who referred a doubtful local council deal to ICAC were disturbed to find that one of the parties involved is also a member. Not that either of these instances, or others, mean that justice wasn't done, but it certainly hasn't been seen to be done.

Lesson 5: Heads of anti-corruption bodies must have a good understanding of the concept of conflict of interest. They must not be involved in any secret society or be office-bearers in any body that could be the subject of investigation.

Question 6: Will the "anti-corruption" body's head be as careful of public money as he/she expects public servants to be?

Mr O'Keefe recently used ICAC money to upgrade his airline ticket from business class to first class when attending a conference in London in May. His expenses had been paid by the conference,

but NSW taxpayers paid \$2,372 for the upgrade. It is noteworthy that this is more than some of the travel rort sums for which he is pursuing Labor MPs.

Lesson 6: Apart from selecting a head with more plebeian tastes, ICAC expenses must be subject to independent audit by, for example, the Auditor-General.

Question 7: The Edgar J. Hoover phenomenon - who can oversee and control a body with all the dirt on everybody in its files?

The founder of the FBI in the USA kept a tight hold on his job, and allegedly many other things, for a very long time by this means. Many investigating bodies in Australia seem to follow the same principle, particularly in areas like paedophilia - allegations are investigated not to catch and stop the perpetrators, but to get something on VIPs. Police will go to some lengths to get something on their ministers, to keep them in line - and on premiers if they can. A body like ICAC doesn't even have to go looking - the information comes to them, and if they want to use it that way, what is to stop them?

Mr O'Keefe is currently in a bit of difficulty with the Parliamentary committee that oversees the ICAC, after being removed from the hearing he was conducting into a doubtful association between two back-bench Labor MPs and underworld figure Louis Bayeh, who allegedly supplied them with a mobile phone, jewellery, and a holiday in Fiji. He was removed by a supreme court judge who found a possibility of perceived bias in various remarks made by O'Keefe in and out of the hearings. Indeed he had seemed from what was reported in the media to be more concerned about the immorality of the MPs' association (they were both married to other people at the time) than the corrupt payments themselves.

WBA for some years has tried, with increasing success, to get the parliamentary ICAC committee to take its role seriously, and look at O'Keefe's leadership, and whether ICAC itself, at \$120 million to date, represents any sort of value for money, with public sector fraud still running at \$billions annually. This is a golden opportunity, as MPs from both sides are most unhappy about the case. However, O'Keefe has referred to ICAC keeping files on individual whistleblowers, and we have to wonder who else has a file at ICAC. What if one of the committee members, or even the chairman, is on the list of MPs whose travel expenses are being investigated? Where would that leave us?

Lesson 7: The most difficult one of all. If a body has enough teeth to be useful, how can we ensure it only uses them as intended?

The Ubiquity of Dishonesty

Dr Karl H. Wolf

[The following article first appeared in four parts of *Wolf's Anti-Entropy Column* in the *AGSO News* of the Australian Geological Survey Organisation, Canberra, ACT, during May to November 1993. Inasmuch as dishonesty is very much related to whistleblowing, it is offered here in totality although slightly modified form.]

Dishonesty, cheating, lying, perks, pilfering, manipulation, fraud, dis/misinformation, verballing, propaganda, deceit, falsehood, hypocrisy, smear campaign, vilification, hoax, bluff, half-truth, whitewashing, inexactitude - whatever term is preferred - they are all-pervasive, ever present, everywhere: used by the highly-and lowly-placed in society and potentially in all job environments. Don't let the word "ubiquity" mislead or fool you: certainly the majority of people are honest, but it is the small dishonest percentage that can cause havoc to any individual and the institution; this conclusion is based on hard facts, not paranoia! There is a "rotten apple" in just about every barrel, sorry to say. Much research information is available to support this, as illustrated below.

Emotionally blunted people accept this debilitating situation without much fuss, and join the "group" or "system" for self-preservation and self-defence - or to enjoy the power game. Like death and taxes, the above phenomena are unavoidable, so it seems. Many of us don't even fight for honesty any longer - "we don't want to or are scared to get involved"! Of course, there are honest people, perhaps even in the majority, but just like the news media (with exceptions increasing) we are not interested in honesty for the moment; thus, let the dishonest have the stage in this article so we can better understand their milieux of operation.

All the above human deleterious personalities or social traits - yes, they may even be psychological characteristics - have been extensively studied, recorded, and debated throughout history. Consequently, many books and articles are available, which can serve as guidelines and as background material, because the above negative phenomena ought to be deliberated early in everyone's education to either prevent them, or to make them obvious,

easy to identify, and easy to counterbalance by positive measures or, when necessary, "brutally" expose them. Whistleblowers come in!

The human cost - not to mention the financial one - to both the younger and older generations, of a seemingly pervasive dishonesty in business, politics, religion (look at the past and present wars), and private life is really immeasurable. What role-models or heroes do the young girls and boys (or teenagers, let alone the above-30 years olds) have to emulate?! The general feeling is that one has to "join the cheats and manipulators" to survive, not to stand out, flow with the trend, to be one of the group, support the status quo. The so-called "unions" don't help in many instances either, as too often they look after their "boys" while other members are bypassed (I know from several personal experiences).

Here are some highly recommended publications by philosophers, historians, sociologists, and psychologists for the ordinary citizen, politician, diplomat, businessperson, manager, among others, to get a feeling for this ubiquity of dishonesty.

The Penguin Book of Lies by P. Kerr is a historical anthology of cases or anecdotes of lies, disinformation, inexactitudes, etc., starting several centuries ago with Samson and Delilah, and Plato's, Cicero's and St. Augustine's untruth; considering dozens of lies pertaining to the Jewish Talmud, the Bible, King Canute, Duke Williams of Normandy, Thomas Aquinas, Christopher Columbus, Machiavelli, Henry VIII, Martin Luther, Francis Bacon, Aldous Huxley, Casanova, Voltaire, Sigmund Freud; to modern dishonesties of various types, intensities, and consequences in many social settings as, for example, perpetrated or deliberated by Mark Twain, Kipling, T. E. Lawrence, Hitler, G. B. Shaw, Churchill, George Orwell, Kim Philby, and many others. A new anthology no doubt is required to include the lies of many "celebrities". Each nation, country, culture, race, or religion could write its own anthology of lies.

The two books by S. Bok, *Lying - Moral Choice in Public and Private Life*, 1978, Vintage Books/Random House, New York; and *Secrets - On the Ethics of Concealment and Revelation*, 1982, Pantheon Books, New York, must be read by every seriously minded person when dealing with the

many potential negative issues, including whitewashing or withholding information on government spending, pollution, fraud, illegal financial dealings, etc.

The classical (over 20 reprints since 1930) *Straight and Crooked Thinking* by R. H. Thouless is one of numerous books offering methods to identify and overcome thirty-eight dishonest tricks encountered in all walks of life. Every whistleblower must be familiar with the dirty illogical twists of the mind - classical rhetoric ought to be taught to all secondary and tertiary students!

Dishonesty of various persuasions of many intellectuals (academics, psychologists, sociologists, scientists, economists, writers/authors, journalists, historians, etc.) as well as politicians, executives, bureaucrats, (no one has a monopoly on lying) has been discussed in some of the following exemplary books: *Intellectuals* by J. Johnson, 1988, Penguin Books; *The Trial of the Expert* by I. R. Freckelton, 1987, Oxford University Press; *The Subjective Side of Science - a Philosophical Inquiry into the Psychology of the Apollo Moon Scientists* by I. I. Mitroff, 1974, Elsevier; *A Difficult Balance - Editorial Peer-Review* by S. Lock, 1985, Nuffield Trust, London; *The Corrupted Sciences - Challenging the Myths of Modern Science* by A. Arnold, 1992, Paladin, London; *Betrayers of the Truth* by W. Broad and N. Wade, 1985, Oxford University Press; *The Bias of Science* by B. Martin, 1979, SSRS, Canberra, ACT; *Intellectual Suppression* edited by B. Martin et al., 1986, Angus and Robertson, Sydney; *Telling Lies For God: Reason v Creationism* by I. Plimer, 1994, Random House Australia; *The Peter Pyramid* by L. J. Peter, 1986, Unwin, London; *The First Casualty - the War Correspondent as Hero, Propagandist, and Myth Maker* by P. Knightly, 1975/89, Pan Books; *Cheats at Work - an Anthropology of Workplace Crime* by G. Mars, 1982, Unwin Paperbacks, London; *Sabotage in Industry* by P. Dubois, 1979, Penguin, England; *Telling Lies: Clues to Deceit in the Marketplace, Politics and Marriage* by P. Ekman, 1992, W. W. Norton and Company, New York, London; three books by Noam Chomsky: *Deterring Democracy*, 1992, Vintage London; *Necessary Illusions - Thought Control in Democratic Societies*, Pluto Press, London; and *Manufacturing Consent - Political Economy of Mass Media* (co-authored by Edward S. Herman), 1988, Pantheon Books, New York; *Orwell's Message - 1984 and the Present* by G. Woodcock, 1984, Harbour Publishing, Canada; *Brave New World Revisited* by A. Huxley, 1958/83, Triad/Panther, London;

and *The Invention of Tradition* by E. Hobsbawm and T. Ranger, 1983/92, Cambridge University Press; *Dangerous Persuaders: An Expose of Gurus*, by L. Samways, 1994, Penguin Books; among numerous others.

Closer to our home base, several news media articles have discussed lying; among them "Integrity and ruined lives - whistleblowers!" by Bill Mellor, *Time Australia*, Oct. 21, 1991, No. 42, 46-51; "Why polliies have to tell porkies" by B. Crouch, *Sunday Telegraph*, June 9, 1991, p. 42; and "Lying - the unpleasant truth" by Bob Beale, *Good Weekend* in *Sydney Morning Herald*, July 15, 1988, 20-24.

The above publications seem to refer to a number of professional groups, but only infrequently to managers, executives, supervisors, and such. Although literally hundreds of books exist on how to become and be effective as one of these so-called "elite" members of society, there are in contrast only a relatively few publications available on their "calculated and/or inadvertent misdeeds, misconducts and malpractices" (indeed, one seldom sees the latter term applied, except to medical practitioners, and then unfairly in many cases!). (However, not to forget, anyone can make an honest, genuine error; but then the question arises as to whether s/he is willing to admit it and rectify the situation.)

Considering the many "know-how" books available to the various professions: when deleterious practices are nearly always systematically ignored, all one has to do is imagine just the opposite of the advice given and rules suggested to be a successful professional, and a picture is obtained as to what a "leader" can do to cause damage and wreck the work environment. In this context, one absolutely must read at least *Managers and Magic* by G. Cleverley, 1971, Penguin, England; *Management and Machiavelli - Power and Authority in Business Life* by A. Jay, 1967/87, Hutchinson, London; and *The Rise and Fall of the British Manager* by A. Mant, 1977, Pan, London.

The provocative book on *Intellectuals* by Johnson (1988) examined the moral and judgemental credentials of academics, researchers, and other "thinkers" as to their respective truths; how they apply publicly-declared principles to their private lives (e.g. attitude to money; treatment of spouses, children, friends, colleagues) - it's a rogues' gallery! Considered are only those from the humanities (e.g. Shelley, Ibsen, Tolstoy, Hemingway,

Russell, Mailer), so that other books of similar incisive analyses are required of all other disciplines or professions.

If some of the "educated" are such self-deceiving liars/cheats and manipulators, what hope is there that the "uneducated proletarians" will stick to facts/truths, assuming that they can think properly in the first place?! (Before you, dear reader, develop froth of outrage on your lips, remember again: we are speaking of the minority in society - it may exclude you.)

For example, the relationships among associates in universities can indeed be "deadly". One professor shot dead four of his colleagues, because for years he was unsuccessful in attempts to expose corruption; he said killing them was the only way to finally get results! (See "Concordia's Trials" and "Death in a classroom", in Canada's *McClean Magazine*, Sept. 7 and Nov. 9, 1992.) His motto, no doubt: "Beware the fury of a patient man" by John Dryden. Below, just a few details on some of the books listed above.

Freckelton's (an Australian) (1987) *The Trial of Experts*, in the forensic context, ought to be studied by every educated person: he considered numerous scientific and non-scientific disciplines' experts who have provided "interpretations" in court. Many case histories demonstrate that truth is too frequently damaged or shelved for more immediate personal gratifications, e.g. power, money, success. See the Lindy Chamberlain case, among others.

Mitroff's (1974) *Subjective Side of Science* is a philosophical inquiry into the psychology of one group of researchers; a real eye opener! (Other books and articles on the same topic are available.) The results of this detailed (with statistical data) sociological investigation are applicable, I dare say, to any group. (Having worked/lived in several countries in numerous types of professional, academic, etc., environments, I speak with authority!) You ought to read the opinions scientists have of their associates, when asked during the sociological interviews! For example: "He/she is nothing but a f...g bastard/bitch", "incompetent SOB", etc. The scientific method is not applicable to emotional thinking, it is clearly apparent! Likewise, you ought to have listened to the occasional crap when a university group discusses tenure and promotions of colleagues or the hiring of new staff! Younger staff are denied tenure merely because "we don't give tenure to first-

applicants independent of their success in teaching and research because that would spoil them"! In two cases I personally know of, it was decided that a prospective new scientist was unwelcome, because he had published too much (i.e. being a highly motivated eager beaver), and thus would upset the status quo of the "older tenured staff".

The *Myths of the Corrupted Sciences* is dealt with by Arnold (1992) (I reviewed the book in the Department of Primary Industry and Energy's [DPIE] *The Bulletin*, No. 22/93, June 1993, p. 5). Of course, many scientists may not agree with his analyses, but I have not seen a refutation. Arnold quite harshly analysed claims made by researchers in regard to numerous theories (read "hypotheses"), methods, and techniques utilised to solve problems and in predicting (and postdating in geology) future and past events. (The "predictive business" is big business, and is being studied by numerous experts/specialists to determine limitations as well as applicabilities. See *Predicting the Future: an Introduction to the Theory of Forecasting* by N. Rescher, 1998, State University of New York Press, among several recent books. I, too, have analysed prediction in several publications to identify misjudgments and wrong claims, to put it euphemistically.)

The big-bang scenario, chaos theory, fractals, uncertainty principle, expert systems, etc., are debunked by Arnold's revolutionary method. I believe that he is correct in many instances, but should have toned down his attack a bit in others, because some of these concepts and hypotheses have unequivocally positively assisted in the understanding of numerous natural phenomena. Arnold pointed out that expert systems have not found one ore deposit or oil pool! Correct. Long-time weather forecasting is impossible. Correct - but depends on many variables and the degree of accuracy demanded; "probability" will get us out of any dilemma! And so forth. Arnold is not a crackpot or pseudo- or anti-scientist (not like the creationists), so read his argumentation on time, randomness, chance, order, cause-effect, computer modelling, creativity, determinism, feedback, geometry/mathematics/statistics and probability, information theory, learning, logic, objectivity/subjectivity, etc. His scepticism is refreshing for any whistleblower - especially highly educated/trained ones in science/technology who attempt to analyse futurology, for example. In this context, one should read also his book *Winners and Other Losers in Peace and War* (a bit of a misnomer as the book is broadly applicable).

Arnold does not deal with deliberate dishonesty in most instances, as did Martin's (1979) *The Bias of Science* - that is taken care of by, among many others, Broad and Wade (1985) in *Betrayers of Truth, i.e. Fraud or Deceit*.

What about the "human/humanitarian" aspects of science and scientists as well as of those who claim to "lead", "guide" or "managerially administer" them (whether they were former scientists or other bods transferred into bureaucracies)? Let me briefly consider only two (one specific, the other more general) of the dozens of books applicable here: Martin et al's (eds, 1986) *Intellectual Suppression* and Peter's (1986) famous *The Peter Pyramid*.

I must repeat here: those who really wish to know about the research or "professional" world's dark side (and you may become a victim, if you live merely by sticking your neck into the proverbial sand of ignorance) absolutely must read Martin's summary on suppression in many social environments: government bureaucracies, universities, research institutions, grant-providing bodies, industry/companies. It reads like a good thriller (but is factual). Some cases are more like horror stories: the "intellectuals" (pseudo-?) do know how to commit "mental murder" sometimes. This expression was used in one of the Canadian University Professors Association's publications in which harassment was described - some leading to suicides, for instance. Although there may be only one-in-a-thousand rotten apples, it's that lone dishonest person who can cause sufficient damage to the reputation of the rest.

Any potential or active whistleblower - as well as those fighting harassment, bullying, wrongful dismissal, and the likes (see Quentin Dempster's *Whistleblower*, ABC Book, reviewed in *The Whistle Newsletter* of March 1998, p 6-7) - must read Martin's book and his other publications, because of the special or expert language (and thus terminology/nomenclature) involved in combating suppression and other deleterious phenomena. So much written material passes between the opposing parties during disputes, that one must be familiar with the special language developed over the years.

Peter is world-renowned for several books, among which *The Peter Principal* deals with the individual eventually reaching a "level of incompetence". However, *The Peter Pyramid* describes the institution, bureaucracy, company, etc. (i.e. groups) reaching this level. Examining the past and

recent history of our government's institutions, there are many that unequivocally had/have reached this level of non-performance. Thanks to certain politicians, at least some of these institutions have been forced to pull up their proverbial socks, although "improvement" has sometimes gone too far, so that the employees are now overworked and the supporting "streamlined" infrastructures is ineffective. There are not enough whistleblowers in the government! Media ought to have ways to encourage and tap potential whistleblowers by offering special telephone numbers, for instance. Yet, the recent *Sunday* two-part program on the Australian Tax System indicates that many latent whistleblowers (sleepers?) do exist, waiting to have a chance to rectify the ill doings of their institution.

The First Casualty by Knightly offers many instances from earlier and recent wars where correspondents were heroes, but too frequently had to act as propagandists and myth makers (i.e. were compelled to concoct dis/misinformation for their governments, or simply could write nothing about specific events, even if the enemy did not gain a strategic advantage; e.g. when disasters seem to be unpalatable to one's own home-based population). Thus, their professional vows or ethical conducts were tempered with or compromised, often voluntarily. Under hot-war conditions, this seems "reasonable", but there are many so-called "undeclared civil wars" of the past and at present, where correspondents/journalists' lies would be unforgivable and could even prolong the miseries. Just to be sure: even under normal democratic conditions, as here in Australia, some so-called journalists employed by institutions have withheld vital information and/or lied.

The books by Mars (1982) *Cheats at Work* and by Dubois (1979) *Sabotage in Industry* deal with work-place crime (see my book-reviews in the DPIE's *The Bulletin*, Nos 23/93 and 25/93 of 10 and 24 June 1993) that ranges from one extreme (merely unethical) to the other in "degree of criminality", exemplified by hidden perks (like so many in our governments), absenteeism, indifference, carelessness, go-slows (like those at the Bureau of Mineral Resources/Australian Geological Survey Organisation in the past, when I worked there), misrepresentations (like at universities I worked for), fiddles, cheating, pilfering, skimming, moonlighting, scape-goating, to stealing and even wilful destruction (e.g. of computers at one overseas

university). And in another university, as mentioned above, even multiple murder was the result when a whistleblower was ignored for years! The cheats and saboteurs (a strong word indeed) involved range from rank-and-file workers to managers/executives/directors throughout society, in all situations; reasons or excuses are many, usually selfish in nature, many unfounded/unacceptable/illogical, of course; occasionally unions even protected the perpetrators of crime. Our Public Service has taken the situation seriously, as indicated by workshops like "Fraud and Corruption Detection" offered a few years ago. Whistleblowers would find a useful place here. Sociologists have established theories and classification schemes of types of dishonesties by proffering models, explanations, and remedies (cf. above two books) to bring some order to the complexities of dishonesty.

The three books by Chomsky (1988-1992) on *Deterring Democracy*, *Thought Control*, and *Manufacturing Consent*, in combination with Orwell's *1984* (did you see the film *Animal Farm* based on his book?) and Huxley's *Brave New World* (see the more-recent Woodcock's and Huxley's analyses, respectively, of *1984 and the Present* and *Brave New World Revisited*) demonstrate that the power struggle underlying so much in "political" (using this word in its broadest sense) life continues unabated in even the greatest democracies. Persuasion can be via brainwashing and coercion (peer pressure, as all high school students know), threats, lying, and so forth, as well as by brutal mental or physical force exemplified by bullying techniques (see *Bullying: From Backyard to Boardroom* by P. McCarthy, M. Sheenan and W. Wilkie - Editors, 1996, Millennium Books of Australia). Subtler methods can be based on *Invention of Tradition* (see book by Hobsbawn and Ranger, 1983/92) that distort past and recent histories; i.e. "traditions" are concocted to maintain artificially the status quo or identity or politically correct preferences of a group, religion, party, culture, or whatever. The Japanese still resist admitting their war crimes. So, what's new?! (See M. and R. Friedman, 1984. *Tyranny of the Status Quo*. Penguin Books.)

Lying has been discussed by psychologists and others in many publications. For example, one popular article by Beale (1988, for reference see above) described five types of lies linked to five personality problems: manipulative, melodramatic, grandiose, evasive, and guilty lies. This is too simplistic, for in business and politics, among others,

one encounters many personality types and even more situations requiring a variety of styles of communication, so that in reality many more varieties of dishonesties and types of lies exist. In politics, and diplomacy, it is argued by some, like Graham Richardson, that porkies/fibs (nice euphemisms for cheating/lying!) are even downright necessary (see article on misinformation by Crouch, 1991, mentioned earlier). With "examples" like that, our youths (nay, the whole population) have no "heroes" to emulate! Indeed, why shouldn't you and your neighbour not have the same "civil right" to lie like any politician?! Who is going to break this vicious cycle? The whistleblowers must! Any person, in any capacity, ought to study E. F. McKenna, 1987, *Psychology in Business - Theory and Applications*, Lawrence Erlbaum Associates Publishers, London (see my book-review in DPIE's *The Bulletin* No. 21/93, 28. May '93, p. 5).

There are many more books on lying and related phenomena available, in addition to those listed here; anyone involved in whistleblowing must be familiar with them in order to make a case. Linguists ought to study dishonesty. The two books by Bok (see above) and H. Weinrich's, 1974. *Linguistics of Lies: Can Language Hide Truth?*, Lambert Schneider Publishers, Heidelberg, certainly imply explicitly and implicitly that there is an open academic and applied discipline here!

Dishonesty (and all its synonyms - or near-synonyms or analogous words, as the *Webster Dictionary of Synonyms*, 1984, carefully points out) are part of the classical rhetoric (i.e. argumentation, critical analysis, logic, . . .) so fundamental in any oral or written debate. Here too, numerous books are available to hone your abilities in analysing information in order to get your "analysis-cum-argumentation" right! Just one superb reference: E. P. J. Corbett, 1971. *Classical Rhetoric for the modern student*, Oxford University Press, New York, with several tables of all-important "types of arguments" important in conducting a logical, foolproof debate. A test: list all types of "fallacies" commonly utilised to bamboozle people. It's not enough to be well trained in your chosen profession; you also must be capable of "logical, critical reasoning"!

Karl H. Wolf is a retired Professor of Geology and researcher, explorationist, and consultant; since about 1965 former editor of twenty books and four international journals, and author of many articles, essays, book-reviews, letters, and commentaries. He was, and still is, a broadly involved researcher and writer. He gained invaluable experience in several cultural settings (Canada, Mexico, Portuguese Timor, Saudi Arabia, aside from Australia, of course; not to mention the many countries visited en route). He is also a member of The Independent Scholars of Australia, The Skeptics Association, and Beyond Bullying Association Inc, aside from geological associations. Together with his earlier "liberal" education (owing to compulsory humanity courses for all science students at his undergraduate university in Canada) and lifelong studies of several of the humanities, he is quite capable of analysing society and its individuals! Numerous deleterious events in universities and one government institution compelled him to do a bit of whistleblowing too. (Copies of all his writings are available on request.)

Confidential settlements

Ralph Nader and Wesley J. Smith

[Extracts from Ralph Nader and Wesley J. Smith, *No Contest: Corporate Lawyers and the Perversion of Justice in America* (New York: Random House, 1996).]

[This book examines] the strategies and tactics power lawyers use to try to crush opponents representing shareholders, employees, customers, small businesses, and the public interest in corporate and government accountability. It will be seen how corporate attorneys scheme to hide corporate misbehavior by pressuring opponents for confidentiality orders and hiding or even destroying damning company files; how they try to force off the legal landscape witnesses, opposing lawyers, and even judges who stand in the way of victory for their clients; and how they use meritless but threatening lawsuits to strike back at opponents who dare to cross them. The corporate lawyer-directed drive to rewrite the liability rules in Washington and throughout the states to immunize big

business clients from responsibility for their actions, even when such actions cause grave harm to individuals and society at large, will be tracked. And we will also describe the one area in which power lawyers dare to steamroll the corporate clients to whom they otherwise bow: overbilling for their legal services. As we proceed, changes that could transform the corporate attorney-dominated, no-contest legal world into one rooted more often in fairness, honesty, and fidelity to just principles should become apparent. (pp. 58-59).

Confidential settlements are even more damaging to the justice system and the public safety than are protective orders. This is the usual drill:

- A person is harmed, perhaps by a defective product, through medical malpractice, in an investment scam, or through wrongful termination from employment.
- The person sues, seeking redress in a court of law.
- Power lawyers are brought in by the defendant's insurance company or by the corporation itself.
- Years may pass as defense lawyers resist and avoid legitimate requests for discovery.
- Finally, if after years of wrangling the defense lawyers are forced to release the requested information, and if the now disclosed evidence proves the plaintiff's case, the defendant will offer a settlement.
- The settlement offered will come with one catch: In order to receive the money, the litigant and his or her lawyer have to agree to secrecy. The terms of the settlement will be kept secret, thereby preventing the public from knowing if the case was valid, while allowing the company to continue to insist that it did nothing wrong. (A million-dollar suit that settles for \$750,000 was probably meritorious, while a case that settles for \$5,000 probably was not provable.) Worse, the settlement offer will require that all the evidence discovered in the case be sealed against disclosure to other persons similarly injured, other lawyers representing such persons, the media, and government regulators - even if the secrecy serves no beneficial public purpose, and even if it endangers the public safety.
- Once the confidential settlement offer is made, the motivations of the litigants, once bitterly at odds, ironically merge. Each now has a vested interest in seeing the settlement go through. The corporation or insurance company can cut its losses and, more important, protect future profits and goodwill with the public by shrouding evidence of its own wrongdoing from public notice. Defense lawyers, having earned an ample fee, are able to resolve the matter successfully while retaining the confidence of the client. The plaintiff obtains money that is often desperately needed, without further delay or risk of losing the case in trial. If secrecy is the price to pay, most are willing to pay it. The plaintiff's lawyer, often working on a contingency fee, can collect his or her paycheck. The court tends to rubber-

stamp its approval since a large and cumbersome case is effectively taken off its hands.

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There is only one loser: the American public.

Bill Lockyer, president pro tem of the California state senate, has sponsored legislation to limit confidential settlements. "The truth is," says Senator Lockyer, "corporations and their lawyers don't want corporate misdeeds made known to the public. They see the public courts as a private way for them to resolve their disputes. Confidential settlements promote that interest, sometimes at the expense of public safety." (pp. 75-76)

Refusing confidential settlements: One way to end confidential settlements is for litigants to refuse to participate in them. This, of course, is asking a lot of individuals who may desperately need the money >from an offered confidential settlement to cope with their injuries. Confidential settlements recall the "offer you can't refuse" from the movie *The Godfather*. If someone is seriously ill and in desperate need of compensation, it is very hard to turn down settlement money for the greater good, i.e., to prevent others from being similarly injured or to promote the democratic principle that government processes and procedures should be held in the open. That is why confidential settlements should be outlawed. But in the meantime, some determined citizens have refused to accept secret settlements. (p. 89)

Courts should refuse to accept most confidential settlements: Cases cannot be kept secret without the cooperation of judges. It is the judge who reviews the proposed settlement. It is the judge who must approve it. It is the judge who signs the order sealing the case from view from the American public. Since it is the courts that grant secrecy, it can also be the courts that take it away.

It is difficult for judges to refuse to apply secrecy when litigants on both sides agree to it. Judges are loathe to interfere with settlements or other

agreements between litigants, believing that if the parties are satisfied, the judge should not get in the way without a compelling reason. In addition, settlements obviously reduce the workload of the court. If the parties are ready to settle, why should the court add to its caseload by carefully scrutinizing the settlement terms and possibly forcing the parties to continue to litigate? Each case can cause a judge to have to plow through piles of paperwork, reviewing legal briefs, documents, and transcripts. Big cases can fill court file cabinets with thousands of documents for a judge to review. Many judges are likely to accept secrecy to make such cases go away.

But judges, like lawyers, have public responsibilities too. They do not preside over a private system of dispute resolution. They are government officials. Every time they act in their official capacity, whether it is issuing a ruling on a motion, signing a judgment, or sealing a court record, they are invoking the authority of the government behind their acts. When those actions hurt the public welfare, judges abuse their power. (p. 93)

Passing new laws: In 1990, Florida adopted an antisecrecy law, the Sunshine in Litigation Act. The law prohibits courts from entering orders that conceal a public hazard or information about a public hazard. The law also makes any agreement to conceal a public hazard unenforceable and allows the public or news media to contest court orders or contracts that conceal public hazards. And the law prohibits the government from obtaining secrecy agreements: All records relating to agreements to settle tort claims against the state must be maintained as public records.

In 1993, Washington State passed the Public Right to Know Bill, despite heated opposition from the giant Boeing Aircraft company and other businesses in the state. The law follows Florida's in most respects. In 1995, Louisiana passed a similar law, despite heavy lobbying against it from industry groups. In many states, however, corporations have succeeded in preventing such laws from passing.

Increasingly, commentators are urging an end to the confidential settlement and unnecessary protective

orders. Here's a sampling:

"All judges should disavow secrecy pacts except on narrow points involving legitimate trade secrets. Disclosure should be the rule, not the exception." - *Business Week*

"[The proposed California law to reduce secrecy agreements] which has been unfairly painted as anti-business, is actually pro-business and pro-consumer that deserves support ... Protecting evidence of fraud or consumer hazard under the guise of trade secrets or maintaining economic competitiveness is not in the best interests of California business." - *Los Angeles Times*

"Imagine a cozy legal system that allows a company to conduct business as usual after its faulty products or toxic wastes were exposed as hazards. The public lives with this cynicism every day, as judges sign secrecy orders that seal the results of lawsuit settlements involving threats to public safety." - *Seattle Times*

It's time to end the secrecy, to open up the process. The disgraceful power-lawyer game of "I've Got a Secret" should be shut down, so that justice is not rationed. (pp. 96-99).

Public held in contempt

Richard Ackland, *Sydney Morning Herald*, 6 February 1998, p. 17.

One of the greatest pieces of television docu-drama ever made in Australia has been kept off the screen in NSW and the ACT for more than two years. ABC viewers in every other jurisdiction have seen, at least twice, *Blue Murder*, the gripping story of the life and times of Arthur Stanley Smith, Roger Rogerson, Christopher Dale Flannery, "Abo" Henry, Tony Eustace, Sallie-Anne Huckstepp, Brian Alexander, Warren Lanfranchi plus the terrible shooting of Michael Drury.

These were household names in Sydney during the 1970s and '80s and screenwriter Ian David and director Michael

Jenkins, with actors such as Richard Roxburgh, Tony Martin and Bill Hunter, have portrayed their netherworld so brilliantly that one's view of law and justice in Sydney will never be the same again.

The reason why the public of NSW and the ACT has been quarantined from such viewing pleasure is that since 1995 Arthur Stanley (Neddy) Smith has been expected to stand trial on several charges of murder. Smith was originally charged with six murders and at his committal in September 1996 three of those original six ended up being sent for trial. He is to be tried for allegedly murdering Lewton Shu, Harvey Jones and Sallie-Anne Huckstepp. We now have a trial date-July 13, 1998. The hearing could take between three and four months and only after it is over, along with the appeal process and any possibility that a retrial might be ordered, will the citizens of this State get an opportunity to have *Blue Murder* programmed for viewing.

In the subterranean world, videos of *Blue Murder* have been quietly handed about for years and there must be tens of thousands of people who have seen what is meant to be quite forbidden to them.

What has kept this artistic endeavour officially off the screen for so long is the law's notion that anyone serving on Smith's jury and who might have seen *Blue Murder* would be unable to bring a clear and unbiased mind to the evidence before the court. In this instance the law attempts to balance the rights of the individual to a fair and unblemished trial, with the rights of the community to have a thrilling time watching a bit of quality Australian telly.

Of course, there is no such balance; the law says that the right to a fair trial comes first, even though such an outcome is based on a fairly large presumption.

It assumes, without any basis of fact, that the average citizen is incapable of discerning the difference between a beautifully crafted piece of television drama and evidence tested under cross-examination in a courtroom. Jurors are assumed by the criminal justice system to be soft in the head and in need of protection. In a sense the law equates the modern jury to the yokel in bowyangs, a million miles from the communications revolution.

It is a matter of public notoriety that this softness in the head ascribed by the law to the average citizen is not the same standard applied to those deemed more enlightened. Ian Callinan, the new High Court justice, for instance, possesses an intellectual rigour that allows him to impartially judge the evidence in the Hindmarsh Bridge case before the court, even though as a barrister he wrote an opinion which said that the legislation which paves the way for the construction of the bridge is perfectly valid. No worries about that at all. The person on the Bondi omnibus is to be kept in cotton wool so that the evidence in the Smith case can be determined impartially, but a High Court judge remains unaffected by his own prior opinion when it comes to sitting

in judgment on the constitutionality of legislation. Such is the symmetry and beauty of the law.

It is also pretty rich to assume, that *Blue Murder* or not, that most potential jurors will know nothing about the Neddy Smith legend, or that he is already serving a life sentence for murder. This information is part of the folklore of Sydney.

Apparently the NSW Attorney General is to refer a discreet aspect of contempt law to the Law Reform Commission. The reference should be widened and a proper study made on the effect of allegedly prejudicial material on the minds of modern day jurors.

[This case also raises issues of free speech and the ability to expose corruption.]

Private eye option to find leak in Main Roads report

Torrance Mendez, (*West Australian*, 8 January 1998, p. 7)

Private investigators could be employed to find the public servant who leaked a damning Main Roads WA report on plans to axe 1000 jobs.

Main Roads Commissioner Ross Drabble believes the leak was tantamount to sabotage.

The critical report by executive director Cliff Matson found big road safety risks in plans to save \$40 million a year by axing 1000 staff and giving the work to private contractors.

About 200 staff in the department had access to the report, which was on a computer database. It was circulated on Tuesday by Opposition transport spokeswoman Alannah MacTiernan.

"It has not yet been determined who will investigate the leaking of this document," Mr Drabble said yesterday.

Main Roads expected to know by the end of the week whether to hire a firm of computer sleuths or whether to use its own resources.

Mr Drabble said a private company would never tolerate commercially sensitive information being leaked.

He said Main Roads held information about contracts relating to "hard dollars and cents".

The offender faced dismissal, depending on the motive for the leak.

Mr Drabble said points raised in Mr Matson's report would be addressed as Main Roads continued to explore hiring private contractors to build and maintain roads.

Mr Matson denounced the policy, saying it risked higher maintenance costs, less safe roads through poorer surfaces, more likelihood of disasters and increased legal liability.

His comments were made in response to a \$25,000 Deloitte and Touche consultancy report on Main Roads operations.

"I am not uncomfortable with Cliff Matson's comments because I asked for these comments," Mr Drabble said.

Ms MacTiernan described the Main Roads action as a witchhunt contrary to the 1992 royal commission and 1995 Commission on Government findings.

"Secrecy in government should be minimised, not maximised," she said.

The royal commission found the interests of the public would be prejudiced if public officials complied strictly with secrecy obligations imposed on them by statutes.

The COG recommended that information held by a public sector body, which had not been classified as protected data, should be available to the public.

[Ross Drabble was appointed Main Roads Commissioner after sitting on the selection committee for the job.]