

## **SHOULD I GO TO THE MEDIA? SOME LESSONS FROM THE “CASH FOR COMMENT” AFFAIR**

Presentation to  
Corruption Prevention Network Forum  
16 August 2001  
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Exactly a week ago, I was talking about this very subject – using the media as a tool in the fight against corruption – but in a very different environment. Rather than being in a rather swish conference room, with air-conditioning and microphones and real chairs I was in an upstairs room, with intermittent power, plastic chairs and a whiteboard in a building with minimal functioning plumbing and holes in floors and walls, which used to be a secret police torture center. I was working with Australian Legal Resources International to present a workshop on Anti Corruption Awareness to Non-Government Organization representatives in Dili, East Timor.

With a passionate group of participants, many of whom were university students fired with the romance of winning the fight for freedom, we discussed what corruption was, where it arose and, by Thursday, some of the tools available to the community to deal with it. The media was high on our list, and we gave numerous examples of the way it worked in Australia, and how it had exposed a number of major scandals campaigned for the punishment of those involved. In return, our participants presented us with a dramatic role-play of their experience of corruption to date. It was funny and entertaining. It left my head reeling and my heart breaking, and I gave thanks for our fine tradition of independent journalism.

Our East Timorese colleagues played out a scenario of utter frustration and desperation, in which wherever the complainant turned, the men with brown papers bags had been there before her. The government, the police and even fellow complainants had all been bought. So had the journalists, who not only didn't report her story but also told her enemies where she was so that she could be killed. The discussion then turned to ways in which press independence and accurate reporting could be encouraged, and how donor country media which already had such traditions could be involved in the short to medium term.

From the point of view of some of our East Timorese colleagues our simple faith in the power of the media was naïve and romantic.

I am still processing my impressions and reflections from my short time in East Timor. I learned and saw and heard many things, with many layers of interpretation open to them. However one of the things that lingered with me, and that I have been mentally unpacking first, is the extent to which (on the basis of my experience to date) we in Australia are occasionally naïve and romantic about our media. I think they have a point, particularly in relation to whistle blowing.

While talking to the media doesn't get us physically killed, and they don't take bribes from the local mafia, we do sometimes take a simplistic approach to how they work, and suffer damage as a result. The media is a powerful weapon against corruption in this country, and we have used it well. However, more and more I am reading and hearing stories of whistleblowers who have suffered terrible breakdowns and great misery as a result of their experiences. I am concerned that we might be tending to lionize the media as great white knights who can overcome the evil lords if only a loyal hero would give them the opportunity. In doing so, we are expecting more than they can deliver, and in the longer term may be undermining their ability to play their current important role.

I'd like to explore these issues further in terms of some of the lessons I learned from taking part as a panel member in the ABA's "Cash for Comment" hearings, and in other investigations. I've distilled them down to 8 propositions.

## **SOME LESSONS FROM THE "CASH FOR COMMENT" AFFAIR**

### **1. The media can set agendas, and get them running extremely quickly.**

There is no doubt that the trigger for the Cash for Comment affair was Richard Ackland's reports on *Media Watch*.

There had been rumours circulating from time to time to the effect that deals had been done between broadcasters and advertisers which might extend beyond the usual personal endorsement and live reads for products. Until then it had all had a certain urban mythic quality. People who "knew for sure" that this was happening couldn't (or wouldn't) say how or why they knew or point to particular relationships or documents or even instances. Not the sort of basis for a responsible bureaucrat to hang an expensive investigation on, especially an investigation which would involve the compulsory invasion of individual and corporate confidential records.

However, Ackland had the goods. He had obtained actual documents which, on their faces, appeared to show the exchange of favourable editorial comment and suppression of negative comment for fees.

The rest of the media caught the story in a trice, and a firestorm of publicity erupted. There was no alternative but to launch a major investigation, and do it pronto. Not that there was any reluctance to do so on our part. Having seen the report we all agreed that the issue was critically important.

It is however my personal opinion that the degree of public interest and concern brought about by the intense media coverage generated the need for the investigation to be by way of public hearing. I can't speak for my colleagues on this point, but I was convinced that the community's interest in debating the issue meant that it was important for all the angles to be canvassed in the open. This was a major decision for me, because this was the first time that I had been convinced that the need of the community to see the process was greater than potential damage to those accused of wrongdoing who might at the end of the day turn out to be blameless. The media can certainly take the credit for that.

## **2. The media are a remarkably effective tool for generating public participation**

All true democracies rely on the interest and involvement of the community. Even when voting is compulsory, we have to rely on the interest and commitment of the people to make informed and deliberate choices. To run an efficient competitive free market economy we have to rely on consumers making deliberate choices between products, and they have to rely on getting appropriate information on which to base those choices. Involvement and participation are the bedrock of all of this.

Once we had announced the enquiry, and particularly once the hearings got underway I was astounded by the involvement it generated. People sent us letters detailing concerns or experiences they had had which might bear on our enquiries. Other people sent us communications indicating their support, or loathing, for what we were doing and their love or otherwise for individuals involved. Some people sent us copies of all the cartoons they found in their local newspapers about the process and the evidence. We got everything from funny photographs, to rude notes to downright incomprehensible stories involving grand conspiracies of various kinds.

This was something the public cared about, and something that went to their fundamental rights as citizens of a democracy. Again, I credit the media with promoting and facilitating their participation and interest.

## **3. Your story and the media story are not always the same**

The ABA is a regulator that supervises the holders of broadcasting licences. These, generally speaking, are corporate entities ranging in size from tiny to multinational. What we were doing was investigating industry practices and licensee practices to see if statutes had been breached and whether the existing codes of conduct were adequate to meet the community's expectations and needs. What we weren't doing was making decisions about the personal ethics, morals or behavioural standards of individual presenters. Our story was the industry, the practices and the standards.

The media story on the other hand was very much about the individuals. How much they earned, what they did, whether they were right or entitled to do it. There were hordes of photographers outside, and a scrum ensued every day of the hearing. They were interested in Mr Laws and Mr Jones, not us and interested in our findings about Mr Laws and Mr Jones, not the industry. The confusion created a number of expectations which we had then to manage – including the expectation that we would somehow “punish” the individuals, who would be considered to have “thumbed their noses at the law” if we didn't.

This proposition is perhaps even more graphically illustrated by the recent case of Greg Malouf and the infamous Keating piggery documents. Malouf went to Four Corners to seek assistance in his case against the Commonwealth Bank. His issue was how he had been unfairly treated. The media issue was how he got the documents, from whom and who paid. Malouf's problem was little more than a marginal note.

#### **4. Where there are hot issues, there are spin doctors**

When you're up there on the bench, you get the only view in the house of the full workings of a hearing. You see the parties and their lawyers arrayed at the bar table, and the journalists with their notepads. You see the witnesses and the executives, nervously waiting to be called to give evidence, and even more nervously straining to listen to what is being said. You see the homeless and the curious, the former moving in for a snooze in the back row and the latter there to support their heroes or follow the story as it unfolds.

The thing that I most noticed was the small group of besuited individuals assiduously moving from lawyers to executives to journalists and back. They worked hard, shuttling back and forward among the various camps. It took me a while to work out that they were the spin doctors, pitching lines and stories to reporters and interpreting the day's events and suggesting helpful angles. Every major player had his or her own spin doctor on duty, every day. I used to watch the media reports and clips and, just for my own amusement, try to follow their trails.

This is one of the major ways in which a story and or its direction can get changed. Once you have released it, the genie is out of the bottle and a number of other people will get to play with it. They are well trained, skilled and sophisticated players and their loyalty is to their client and presenting issues in the ways most favourable to them. The Public Relations Institute of Australia does indeed have a code of ethics, but only a comparatively small number of the spin doctors are members.

In any given controversy, most of them will be busy trying to ensure that your story is not the media story.

#### **5. Responsible journalists protect their sources well.**

I don't know where Richard Ackland and the Media Watch team got their material. We ultimately got it by demanding all relevant documents under powers granted to the ABA by the Broadcasting Services Act. We were all impressed by the care the ABC journalists took not to reveal anything that might disclose a source. In my experience this is an attitude adopted by all of the best journalists I have encountered.

However, it is easy to assume that because the journalist you speak to won't reveal you as a source you are safe. Plenty of sources effectively reveal themselves, to their own peril. Sometimes it is by disclosing material or information that was only available to a small group of people, or from their behaviour or just not thinking how readily identifiable the material they provide might be. I saw at least one investigation where the identity of the informant was guessed within a week of our calling for documents on an issue. The predictable happened – he lost his job and ended up leaving the country. More than one person commented that his handling of his disclosure seemed to indicate a personal death wish as much as a commitment to the public interest!

## **6. Not all media practitioners are journalists**

We tend to assume that everyone who appears in current affairs or news, on radio or television, is a journalist. We tend to use the term as almost synonymous with “presenter”. In fact many, if not the majority, of the people who appear on radio and television programs which deal with current issues are not member of the Media Entertainment & Arts Alliance and have never formally been trained as journalists. They are not bound by the MEAA’s code of ethics, and are in no way steeped in journalistic tradition.

One of the most personally shocking, and appalling, things I heard in the course of the Cash for Comment affair was John Laws’ remark, made not to us but in the course of a media interview, to the effect that he was an entertainer, not a journalist and that therefore there was “no hook for ethics”. Personally, I think the “hook for ethics” lies in the fact of being a human being who continues to draw breath, let alone being one with the potential to influence a great many others.

## **7. Not all media practitioners are independent**

The fact, and extent, to which radio presenters were prepared to enter into contracts for the extended promotion of sponsors’ interests was the great revelation from the Cash for Comment enquiry. Having begun to dig, we were all startled at the extent of the practice.

Everyone knows that the object of commercial media is to make profit by selling advertising. This means that their customers are not their viewers but the advertisers, and the product is not programmes but audience attention. This should be a fairly transparent process, where advertisements are booked and paid for and are generally distinguishable from editorial. We found the distinction to be quite blurry in places, where even station executives with decades of experience couldn’t tell if something was an advertisement or not when we played tapes of their own station to them. So we directed that this be tightened up, and advertisements clearly distinguished.

The fundamental principle that we thought needed to be recognized was that the public needed to know who was trying to persuade them, and the fact of payment to a presenter was relevant to all reports dealing with the person making the payment. As such it required to be disclosed – with or without cowbells, whoopee cushions or other noises. I don’t care.

What follows though is that the person you go to to take up your cause may or may not have another interest in the issue. At least in commercial radio, there is now an industry standard which requires these interests to be listed and you can check them out before you launch yourself into a disclosure. The standard only applies to news and current affairs programming, but that is where most corruption issues would be taken up. There is nothing of the kind in television and no proposal for any investigation into TV practices. Discloser beware.

## **8. Where there is a juggernaut, there will be road kill**

Our enquiry quickly became bigger than Ben Hur, with a large hearing room full most days and TV news reports of the proceedings. Whole teams of lawyers infested the place and we had documents by the truckload. Our amazing legal and administrative team worked ridiculous hours, on more than one occasion all through the night, to manage it all.

To do the job thoroughly, we had to call everyone who might be able to shed on light on what had happened, and we were doing this in public. Some people are better able to cope with this kind of pressure than others, but there was no denying that it was extraordinarily painful for those who were subjected to it. Mr Laws and Mr Jones were grim faced and tight lipped, clearly suffering. Mr Conde from 2UE sat looking dreadfully sad, flanked loyally by members of his family who had come to support him through the ordeal. And it was an ordeal.

There was one particular witness, an executive with a long and distinguished career, loved and respected in his field. I won't name him again here. However, his evidence showed that he had been unable to discharge the duties assigned to him, and in the course of cross-examination he was clearly falling apart. He had committed no misconduct, nothing unlawful and as far as I could tell little that you could call unethical either. He had simply been tasked with something he could not do, and which perhaps no one actually could have done, and he was being required to dissect his failure in detail in public. The juggernaut of the enquiry simply rolled over the top of him. It was excruciating. I have never in my life been so grateful to see a witness complete his evidence.

We spent a lot of time in the written documentation trying to keep the road toll down. There was always a balance to be struck between reporting what had happened and the material, which supported our conclusions, and unnecessarily trashing the names and reputations of people involved only on the periphery of events.

## **MAKING THE DECISION**

Deciding to use the media is deciding to use a big gun. The media are a very powerful weapon, and remarkably effective. Like other big guns however, there is a big kick back and you may not always hit your target. This is not a decision to be made easily or lightly. It is in fact a careful ethical balancing act, and your best shot at achieving your ends will come from making a good decision and being prepared for what consequences may flow.

This in turn means making some careful and thoughtful analysis of your situation, and the people with an interest in it.

Ethical decisions, at their most fundamental, are about relationships and about balancing competing commitments. I have worked with a number of whistleblowers and potential whistleblowers in my time, and the most damaged and hurt have been the most romantic and idealistic. The ones who survived best were those with realistic views about what was likely to happen and how the process would be likely to run. They understood and they planned accordingly.

## Stakeholders

An important first step in making a decision of this kind is to identify those who have an interest in the outcome. The obvious ones are usually easy – the public interest, the potential whistleblower, the alleged wrongdoer(s). A little further thought however will assist in identifying other less direct stakes, and thereby also assist in scoping the potential effects of a decision to go to the media.

In discussing whistle blowing with various groups, usually by way of hypothetical scenarios, I am often struck by the way in which many people (especially professionals) seem to think that considering the welfare of their family and loved ones is somehow suspect. Families and friends are valid stakeholders in decisions like this, and they hold big stakes. What might happen to them? How might they react? How might they be treated? There is very rarely an ethical imperative to sacrifice people you love. These are valid and important considerations, particularly important for the psychological preparation they involve if you do decide to go public.

Others who might have interests to consider include workmates, and the organization as a whole. What might flow from a disclosure? How might story angles run? Many people identify strongly with what they do and where they work, and react very personally when that external identity is attacked. Morale can really plummet in the face of a public bagging, or a ministerial trashing in response to pressure. Simple catch cry styles of reporting can easily attach tags of “corrupt” or “incompetent” to entire organizations and every one who works in them. On the other hand, a public discussion can have a wonderfully liberating effect in some organizations. Finally what has been suppressed can be talked about, a problem can be fixed, energy can go towards actually doing the job instead of cover-ups and anxiety. Take the time to think through the nature of the beast you are dealing with.

It's also worth thinking through the stake of those connected with the wrongdoers. Families, friends, colleagues will be affected here too. Often I have seen whistleblowers who just don't want to face this issue at all. The wrongdoer has done wrong, and therefore any consequences are on their head. This kind of approach can really feed a blame game – which is about emotions and history, not about rectification and moving forward. This needs careful and sophisticated analysis. There are some issues where the issue is so important that you need to accept that there is no alternative – but you also need to accept that there will be a juggernaut, it will run over people and that they will suffer. Compassion for all involved is a good way to help keep your head and your thinking clear.

## Steps in the decision making process

### 1. What are the facts? What are my assumptions?

Having identified the relevant stakeholders, and considered their interests, the next step in making an ethically balanced decision is to identify the relevant facts. Integral to this process is assessing and differentiating between what you actually know and what you assume.

In my experience, when I work with people through this step, they are often surprised to discover how much of what they are certain of is actually the result of assumptions, usually about the consequences of or motivations for observed behaviour.

You will never have all the facts. You will usually have to make some assumptions – we all do, every day. The important thing is to be able to tell the difference – to know when you are assuming. The strength of your case, and your likelihood of being right, depends on the weight of factual information and the reasonableness of the assumptions drawn in response to it.

## **2. What are the values in play here?**

This is often a tricky process. There will usually be several value sets in play. As the decision maker, there will be your own personal values and morals. There will also be the espoused values of your organization – that is what the Code of Conduct and or Code of Ethics says.

Usually there will also be the implemented values of the organization. These are not usually explicit, but are reflected in the ways you actually behave rather than what you say you believe in. For example, organizations with corruption problems sometimes espouse values like “every decision should be 100% in the public interest” but engage in behaviours that make it clear that loyalty to each other is more likely to be rewarded – making it a much higher order value in action than the espoused, more theoretically respected, value.

There may be a fourth set of values too – the personal values of the wrongdoer. You may or may not have enough information to know what these are, but you can often make some informed assumptions on the basis of the observed behaviour.

This values analysis process is important for two reasons. Firstly it allows you to engage in some priority setting, against which you can measure you own proposals for what to do. What values are you really serving here? Are they appropriate? Secondly, thinking about the actual values in action in your organization and the values that the wrongdoer may be implementing will assist you to think about the likely consequences of your proposed action. How the others involved will react will depend largely on what “value buttons” you are pressing. This in turn is important for your own well being during the whistle blowing process.

## **3. What are the alternatives?**

A clear and cogent canvassing of alternative courses of action becomes possible once you have an understanding of who is involved, what you know and what might be driving the behaviors.

Is the media the appropriate avenue? Are there others: such as protected disclosures within your organization, the ICAC, the parliament? Does it need to be at such a high order response at this point? Could you persuade or lead by example?

Consider carefully the responses that each of these steps might provoke and their impacts on stakeholders. Understand what it is that you are proposing to bring about.

## CONCLUSION

In our democracy, the media are big and powerful guns. They play a vital part in exposing corruption and in generating and inspiring the discussion that underpins informed choices about our government and society.

As a weapon however they are not easily aimed or controlled (and a good thing that is too). They are not superheroes, but people doing a job: which is to report and analyse news stories. They make mistakes, they have their own agendas and imperatives. They do their best to protect their sources but they are not the guardian angels of whistleblowers. That's not their job – they can't be.

In our democracy, whistleblowers are often freedom fighters. They bring to light the hidden mess, the corruption and the cover-ups that undermine our government and society. They are not superheroes either, but people of conscience trying to do their best as employees and as citizens. They too make mistakes and have their own agendas.

The real tragedy for all of us would be if whistleblowers were to become disillusioned with the media, blaming them for not saving them from the pain and suffering which can result from going public. It would be if people decided that the hurt they have seen others sustain made it not worthwhile for them to bring problems to light.

The best way to prevent this is I think to take some advice from our East Timorese neighbours. Don't be naïve and romantic. Know what you're going into, assess the risks and be prepared for the consequences. If the principle is worth fighting for it is worth fighting for properly - not with vainglorious risk taking but careful preparation, strength of heart and clarity of mind.

If it needs doing, do it – with heart and soul and mind, not with your white hat pushed down over your eyes.