

Techniques of Exposing Corruption and Reporting Legal Proceedings

- **Evan Whitton***

I have to start with a few disclaimers. There is only time for a few bland assertions. Footnotes and anecdotes are on the CPN website, www.corruptionprevention.net. If you think anything is unclear or wrong, please e-mail me at ewhitton@zip.com.au.

The conference theme is the media's role in curbing corruption. I believe the legal system is the greatest obstacle to preventing corruption and that the media thus have a duty to report how the law actually works and how it got that way. I have to admit we don't do this very well and I can understand that; I had been reporting trials and inquiries for 27 years before the penny started to drop, and then only by way of a combination of freakish circumstances which an actuary would rate at about a billion to one.

Some of what follows may thus be just a tiny bit critical of the legal biz and people in it, but [tugs forelock] we are but the humble messengers; most of it comes from the pens of common lawyers and judges. Here is a lawyer named A.S. Gillespie-Jones on a Dubbo cattle-duffing case.

Judge's Associate: Do you find the accused guilty or not guilty of cattle-stealing?

Foreman: Not guilty, if he returns the cows.

Judge: You swore you would try the issue between our Sovereign Lady the Queen and find a true verdict according to the evidence. Go out and reconsider your verdict.

Associate: "Have you decided on your verdict?"

Foreman: Yes, we have. We find the accused not guilty and he doesn't have to return the cows.

This confirms that the jury system has been corrupt for 800 years. Since they don't have to give reasons; they can and do bring in a verdict on the colour of your tie or your skin, e.g. the Rodney King case, O.J. Simpson.

And Professor Alan Dershowitz, a trial and appellate lawyer and Professor of Law at Harvard University, is quite severe. He says: "The American criminal justice system *is* corrupt to its core: it depends on a pervasive dishonesty by its participants ... The courtroom oath – "to tell the truth, the whole truth and nothing but the truth" is applicable only to witnesses. Defense attorneys, prosecutors, and judges don't take the oath – they couldn't!"

I do not imply that judges and lawyers are knowingly dishonest; Professor Bent Flyvbjerg says in *Rationality and Democracy*. "It is not unusual to find individuals, organizations, and whole societies actually believing their own rationalizations." (1)

There are of course areas of law which do not oblige lawyers to lie and to act like psychopaths. There are also plenty of lawyers and judges trying to wring some justice out of a unjust system, and more are saying publicly: There must be a better way. A former Justice Russell Fox QC in *Justice in the 21st Century*

Ladies and gentlemen, in a centenary year it is proper to recall that the “mother country” gave us many wonderful things: cricket, Rugby football, battledore and shuttlecock, the rule of law, defined as the rule of serial liars, a corrupt and evil legal system, and a culture of trickle-down corruption in the trade of authority, including judges, going back to William II, who was shot dead exactly 901 years and 14 days ago. So far as Sydney’s resolute culture of corruption is concerned, we name the guilty man in footnote (2).

The battle for the freedom of the Press was not fought, and to a minute degree won, simply in order to make proprietors rich; the media has obligations to seek the truth and to serve the community by exposing wrongdoers, particularly the corrupt, who defeat democracy. A Fleet Street genius, Sol Chandler, put it this way: “The oldest rule of journalism, and the most forgotten, is to tell the customers what is really going on in the town where you publish.”

Unfortunately, Defoe’s invention of modern journalism in 1704 coincided with a period of political and judicial corruption which was sublime even by England’s towering standards: most politicians in the Whig oligarchy were organised criminals, and most judges were former Whig politicians. (3) The judges reinvented libel law to prevent the Press exposing them and their political colleagues, and Australian judges unthinkingly, I trust, felt the bizarre rule of precedent obliged them to adopt English libel law. Russell Fox QC says justice means fairness and fairness means a search for the truth. Libel law does not try to find the truth and it falsely presumes that appearance (reputation) is reality; that the media are always guilty; that offending words are always meant to damage; and that they always do cause damage. This makes it difficult, if not quite impossible, to expose the corrupt.

Techniques of Exposing Corruption

The Cameron Effect is named after the English reporter, James Cameron. He said public opinion is formed rather like inventing an atom bomb: the public is bombarded with facts until, mysteriously, critical mass is reached; one more fact and the trade of authority has to take action, however reluctantly. The technique thus involves exposure of new patterns and exposure of new facts, preferably supported by documents.

The new pattern emerges by digging up a lot of facts already in the public domain, preferably under privilege, and organising them in a strict chronology. (4) The great V.J. Carroll, the *Herald’s* first eminent editor in 150 years, said: “Once you get the chronology right, everything falls into place.” In footnote (5) I note how reporters can get new facts at the race track, from honest cops, from people with a grievance, and over the transom from whistleblowers. It may take years to get a result. I have noted: “There IS a god, but it sometimes takes Him five or 10 years to get out of the blocks.” You just have to keep chipping away.

The media has discharged its duty to expose the corrupt surprisingly well, considering the giant blockade of libel law. In footnote (6) I note that there were 30 inquiries in the 27 years from 1967 to 1994. Most touched on corruption and most were instigated by reporters. Interestingly, 11 of the 30, or 37 per cent, were inquiries into possible corruption in the judiciary.

Techniques of Reporting Legal Proceedings

In 1991 *The Courier-Mail’s* J.J. Gagliardi made a singular advance in the way criminal trials are reported. At the end of Sir Terry Lewis’s corruption trial J.J. published compelling evidence which the jury did not hear. Some Sydney court reporters now do this after major trials.

under which particular evidence was concealed and other aspects of the system. To do that they (and others interested in preventing corruption) need to keep in mind a few definitions. This is a short version; legal sources are in footnote (7):

As noted, Fox QC says justice means fairness and fairness means a search for truth. (He says truth means reality). The adversary system is controlled by lawyers. A Harvard ethics professor says lawyers can accurately be described as serial liars because they persistently try to induce others to believe things the lawyers believe to be false. Legal ethics hold that lawyers are not morally responsible for what they do for their clients. A psychiatrist says that sound like psychopathy. A famous barrister says the adversary system is a game and shouldn't be. The system can thus be defined as a corrupt game controlled by lawyers, some of whom act as if they are serial liars and psychopaths. It can be unfair to accused, victims, police, prosecutors, and the community. (8)

So much for British justice. How did that happen? It started badly and has got progressively worse. After a conference in Rome in November 1215, European courts adopted a truth-driven and judge-controlled system but it was rejected by a dozen or so almost certainly corrupt judges and lawyers in London, then a frontier town of about 25,000 people.

Barristers got control of civil litigation by 1550 and effectively made it a get-the-money game via interminable pleadings, discovery, negligence, class actions, libel etc. *Oh, the shark has pretty teeth, dear/And he shows them pearly white.*

Barristers got control of criminal trials by 1800, and then, in the sacred name of fairness (!), began to invent truth-defeating (and hence unfair) rules which conceal relevant and probative evidence. Along with cross-examination designed to hide the truth, the rules effectively make it a get-the-guilty-off system. Some of the rules are in footnote (9)

The rules also spawned unfair *sub-judice* contempt law: it has a resumption of guilt for the media; alleged offenders are not permitted trial by jury; and they can be found guilty without having a guilty mind.

I should mention trial by media. Unlike the law, the media is obligated to try to find the truth. On the worst day it ever saw, trial by media could not possibly be as unfair and unjust as trial by the adversary system.

Reporting inquiries

Australian investigatory bodies include Royal Commissions, commissions of inquiry, inquests, various tribunals and standing commissions on corruption: the Independent Commission Against Corruption, the Police Integrity Commission and the Queensland Criminal Justice Commission.

Since no-one is charged, the reporter has more scope than at a trial to tell the customers what is going on; he only has to worry about libel. But, as with trials, the evidence comes out piecemeal, and facts without context can be almost meaningless. Partial remedies are to use the techniques of the Fleet Street parliamentary sketch for daily reports and writing a chronology later. Footnotes (10) and (11) give examples.

Fair and accurate reporting of inquiries requires assessment of what they are supposed to do and how well they do it. They are supposed to find and state the truth. Since the adversary system is useless for that; inquiries are supposed to use the European investigative (inquisitorial) system which does not conceal evidence. Using a version of that system, coroners heard enough evidence to find that Denis Tanner and Dominic Perre committed murders, but DPPs, hamstrung by rules for concealing evidence, did not even charge them. A system which

In France, the presiding judge is obliged to find out the truth for himself; he questions witnesses and allows them to give the whole truth in a narrative, rather than the artificial Yes or No. Prosecution and defence lawyers can ask questions through the judge and make submissions, but they are not allowed to cross-examine lest they “pollute” the truth with the usual psychopathic devices: “destroying” witnesses by brutal questioning, lying to them, making them agree that black is white, shifting the goal-posts, putting the victim on trial etc.

Unfortunately, Australian inquiries tend to be a costly and rather ineffective mixture of adversarial and investigative techniques. They do not as a rule conceal evidence (12), but the purported investigator uses a barrister to question witnesses, and barristers for suspects may be allowed to obscure the truth by cross-examination. (13) The report tends to be wishy-washy because the investigator may subconsciously be mentally crippled by the rules for concealing the truth. Inquiries do produce facts which can be used in pattern journalism, but otherwise are largely a waste of taxpayers’ money.

It is thus hardly necessary to corrupt an inquiry, but some certainty can be ensured by fixing the Commissioner, as Bob Menzies apparently did for the first *Voyager* inquiry, or by fixing the terms of reference, as the sodden and sinister Sir Arthur Rylah did for the Melbourne abort-extort inquiry. Or both.

A corruption protection system

I think it is clear that the law is effectively a corruption protection system. The corrupt are protected at the front end by libel law and at the back end by the adversary system. The effect can be demonstrated almost mathematically by figures from the truth-driven French system and figures from the Independent Commission Against Corruption which uses, however feebly, the French system.

Justice James Burchett understands that the French system is fair and that its verdicts are generally accurate. In fairly serious crimes, trained investigating magistrates (*juge d’instruction*) winnow out the dubious cases and decide that, say, 100 are guilty. Judges and jurors sitting together then give 10 the benefit of the doubt. This 90 per cent conviction rate sounds about right; Professor Dershowitz says: “All [US] criminal defense lawyers, prosecutors and judges understand and believe [that] almost all criminal defendants are in fact guilty.” (14)

In its first six years ICAC recommended corruption charges against 208 people. In France, some 187 would have been found guilty, but only 63 were found guilty, i.e. 30 per cent, by the adversary system. Allowing for those the DPP doesn’t even charge because of the rules for concealing evidence, our conviction rate is about 20 per cent. Corruption-prevention, not to mention justice, surely requires that we make the relatively simple move to a truth-driven system controlled by trained judges, i.e. a better version of the system we already use for inquiries. (15)

Will it happen? On Monday 28 May 2001, the French Prime Minister, M. Lionel Jospin, called for a common legal system throughout the European community based on the Charter of Fundamental Rights. England may thus have a choice: either to dismantle the corrupt adversary system and accept the European system it rejected nearly 800 years ago, or to become a theme park. If British justice at last begins to seek truth, fairness and justice, can the colonies be far behind? For the media, it would mean that trained judges would seek the truth behind alleged libels and *sub-judice* contempt law would not exist. Some barristers may not like it, but they can be safely ignored: they make up 1/25th of one per cent of the population. And surely some barristers will be relieved that they can stop all that dreadful serial lying and acting like psychopaths.

Minister Paul Whelan, DPP Nick Cowdery, media proprietors and editors, the Corruption Prevention Network, business, medical, manufacturing and insurance organisations, and Chief Justices Jim Spigelman and Murray Gleeson. They surely have an obligation to publicly tell Bob Carr and John Howard and their law officers: "My people cannot do their job properly under a corrupt legal system."

And CPN members and others interested in democracy can lobby their local members to put two questions at the next referendum:

1. Should the legal system continue to be controlled by serial liars? That gets the **No** answer.
2. Is a search for truth by trained judges fundamental to justice? That gets the **Yes** answer.

Finally, a serial liar in action in a negligence case courtesy of the Massachusetts Bar Association. The lawyer could expect billions if he could get a doctor to admit he sliced up a man while he was still alive.

Doctor, before you performed the autopsy, did you check for a pulse? - No.

Did you check for blood pressure? - No.

Did you check for breathing? - No.

So then it is possible that the patient was alive when you began the autopsy? - No.

How can you be so sure, doctor? - Because his brain was sitting on my desk in a jar.

But could the patient have still been alive nevertheless? - It is possible that he could have been alive and practising law somewhere.

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Footnotes

(1) The Latin tag is: *Quod volimus credimus libenter*: we always believe what we want to believe. We can be sure Spigelman CJ believes every word of a statement he made in 1998, although my research suggests there is barely a syllable of truth in it: "[The legal] profession has an ethical dimension and values justice, truth and fairness ... The common law and the adversary system ... is [sic] one of the greatest mechanisms for the identification of truth ... that has ever been devised."

(2) Bobby Stewart, Viscount Castlereagh, was one of those statesmen who does whatever it takes; Shelley wrote: *I met Murder on the way/He had a mask like Castlereagh*. As the corrupt Pitt the Younger's man in Dublin, he rounded up the leaders of citizens who preferred not to be ruled by England and exported them to Sydney in 1798, and in 1800 he "persuaded" Irish politicians to vote their Parliament out of existence with bribes of 40 peerages and four million pounds, getting on for a billion of our money. Sydney's *de facto* government at the time, John Macarthur's trickle-down Rum Corps, no doubt took the view that if that sort of thing was proper for His Majesty's government, it was proper for His Majesty's colony, a sentiment Bobby Askin is said to have been gleefully echoed in May 1965 when he became Liberal Premier after 24 years of dubious Labor government: "We're in the tart shop now, boys." He was right about that.

(3) Tommy (Trickle-Down) Parker, Lord Macclesfield, for example. As Lord Chancellor and head of the perennially corrupt Chancery Court 1718-1725, he extorted bribes from barristers who wanted to be Masters in Chancery so they could in turn

(4) When Justice (as she now is) Mary Gaudron was NSW Solicitor-General, I wrote that she had got the law wrong on something. She rang me up to complain. I said: "Why are you talking to me? I'm just a harmless drudge scrabbling among the yellowing files." She said: "I don't know about drudge."

(5) Ways of getting a new fact:

The transom. Laurie Oakes told a conference of bureaucrats they had an obligation to democracy to break the official secrets act on a daily basis. That also applies to police and others who have information about corruption which the media cannot know. We know what happens to whistle-blowers; the prudent whistleblowers sends the documents by mail or over the transom.

The racetrack. Sol Chandler said: "A reporter should drink, and go to the races; Harold Holt has told me things in the gentlemen's urinal at Flemington he would never have dreamed of telling me in his office." Sol later got me to go down to Portsea and ask Holt's mistress, the divine Mrs G, what she thought of his gallant attempt to swim to China. The racetrack is also ideal for criminal conspiracies. Sir Arthur Rylah, Deputy Premier of Victoria, met a corrupt Homicide cop, Superintendent Jack Matthews, at the races. On Wednesday 27 July 1977 a keen-eyed reporter would have seen three organised criminals, George Freeman, Dr Nick Paltos and chief magistrate Murray Farquhar consorting at Randwick racecourse; a fortnight later Farquhar perverted justice for Keven Humphreys, head of the Australian Rugby League, who was charged with theft of \$50,000 from the Balmain Leagues Club.

Honest cops. The great exposure reporters, Bob Bottom and Chris Masters, got close to honest cops. This technique may require some capacity for drinking beer. Honest cops gave Bottom the tapes and transcripts which indicated, among much else, that Justice Lionel Murphy was corrupt. (I should note that the new fact needs the right projection. Bob Bottom gave tapes and transcripts to *The National Times* in 1983, but its headline, BIG SHOTS BUGGED, did not excite. He then gave the material to the *Melbourne Age*, and its headline, SECRET TAPES OF JUDGE, rang the bell.)

Luck. The fix was in at the first (1964) *Voyager* inquiry; the Commissioner, Sir John Spicer, concealed evidence that the *Voyager's* captain, Duncan Stevens, was an alcoholic who drank at least one triple brandy before he went the wrong way and ran his boat into the *Melbourne*, killing 82 and traumatising more. On 3 May 1967 members of the Canberra Press Gallery apparently did not realise that John Jess's speech to the Liberal party room about Stevens' drinking was a sensation. My distinguished colleague at *Melbourne Truth*, Richard L'Estrange, who happened to be in Canberra on another matter, thus had the field to himself, and Sol Chandler was the master of projection. Ric's piece and Sol's splash - *Voyager* scandal - this/is what it's all about/DRUNKEN DUNCAN/Captain with triple brandy - made another inquiry inevitable.

The man with a grievance. Charlie Wyatt was a Melbourne cop who found illegal bookmaking paid better and backyard aborting better still. Homicide detectives Jack Matthews and Inspector Jack Ford extorted bribes from him, and when he was picked up on another charge he wrongly believed they had double-crossed him. When he got out he came to me. Dr Bert Wainer persuaded Wyatt and doctors to swear affidavits about the extortions. The *Truth* splash was: WE PAID OFF THE COPS. Ford and Matthews when to prison.

(6) Inquiries mostly forced by the media. (In more recent years Richard Ackland and the ABC forced an inquiry into cash-for-comment on radio. The list does not include inquiries by standing anti-corruption commissions, ICAC and the Queensland Criminal Justice Commission. It first notes the major initiator(s), if any, and then the lawyer or judge who ran the inquiry. Dr Wainer was not a reporter; McCabe and Lafranchi were accountants not lawyers.)

1967. L'Estrange/Burt - possible corruption by judge at first *Voyager* inquiry.

1970: Wainer-Whitton/Kaye - possible corruption in Victorian police re abortions.

1973-74: Bottom-Reeves/Moffitt - organised crime in Sydney clubs; possible corruption in NSW police.

1970: Summers/Nagle - possible corruption in NSW Prisons Department re criminal assaults on people in the care of the state.

1977-80: Mackay/Woodward - drug-trafficking; possible corruption.

1977-79: Mackay/Williams - drug-trafficking.

1978-81: McCabe and Lafranchi - re possible abuse of tax laws in 923 Victorian companies and three Queensland corporations.

1979: Bottom/Sullivan (in camera) - possible corruption in NSW police, judiciary and legal profession re Cessna drug case.

1979-81: Bottom/Lusher (in camera) - possible corruption in NSW police.

1980-84: Richards/Costigan - possible malpractice, including abuse of tax laws, in Victorian branch of Federated Ship Painters and Dockers' Union.

1981-83: Stewart - Mr Asia heroin syndicate; possible corruption in Queensland and NSW police.

1983: Masters (Bottom)/Street - possible corruption in NSW judiciary, politics, police and legal profession re 1977 Humphreys theft case.

1983-84: Wilkinson (Bottom)/Slattery - possible corruption in NSW politics, legal profession re Rex Jackson taking bribes to release prisoners, ex AFP *Spendthrift* tapes.

1983-84: Bottom/Cross: possible corruption in NSW judiciary.

1984: Bottom/Senate committees - possible corruption by High Court Justice Lionel Murphy re *Age* Tapes.

1985-86: Bottom/Stewart - possible corruption in Australian judiciary, NSW police, NSW politics re *Age* Tapes.

1984-86: Vinson et al - possible corruption in NSW judiciary re drug sentences in District Court.

1986: Bottom/Nagle - possible corruption in NSW police re Mackay murder.

1986: Bottom/Blackburn et al - possible corruption by Justice Lionel Murphy.

1987-89: Masters-Dickie/Fitzgerald - possible corruption in Queensland police, politics, judiciary and bureaucracy.

1987/90: Haupt/Slattery - possible medical/bureaucratic malpractice in New South Wales re Dr Harry Bailey's deep sleep therapy.

1988/89: Wendt/O'Connor (Australian Broadcasting Tribunal) - possible corruption in Queensland politics re J.Bjelke-Petersen's demand of \$1 million from A. Bond.

1989: Masters-Dickie-Campbell-Goff/Gibbs et al - Justice Vasta's possible corruption.

1990: Purnell - circumstances of shooting of Constable Drury in 1984.

1991: Carter - possible corruption in attempt to bribe Tasmanian politician.

1991-92: Gyles - possible corruption in NSW building industry.

1992-93: Wilson et al - possible corruption in WA trade of authority (WA Inc.).

1993: Carter - possible corruption re jury for trial of Sir J.Bjelke-Petersen.

1994: Hatton/Wood - systemic corruption in the NSW police force.

7) **Justice** means "a fair go all round", according to NSW Conciliation Commissioner Gilbert Manuel. It means fairness, and fairness means a search for truth, and truth means reality, according to former Justice Russell Fox QC.

The adversary system is defined as a system controlled by lawyers. The judge controls the court but lawyers control the process. They decide who will give evidence, what they will say, and how long the process will last, with the meter running. Since lawyers are in charge of a major legal system, the 1600 million people affected by it can expect, and rightly expect, them to run it responsibly, with anxious care for fairness, truth and justice. Geoffrey Roberston QC says the adversary system is a game and shouldn't be.

Lawyers can accurately be described as serial liars because they persistently try to induce others to believe things the lawyers themselves believe to be false, according to Arthur Applbaum, Professor of Ethics at Harvard University. A lawyer, Charles Curtis (1860-1848), wrote: "I don't see why we should not come out roundly and say that one of the functions of a lawyer is to lie for his client." Lawyers have been serially lying in written pleadings for five centuries and in cross-examination for four.

Judges are barristers one day and untrained judges the next. We can be sure they instantly stop serial lying; that they have been desperately racking their giant legal brains to find a way to stop their former colleagues' serial lies; and that after five centuries we can expect a solution any day now.

Legal ethics appear to be one of those oxymorons, like military intelligence and criminal justice. Fox QC says the ethics hold that lawyers are not morally responsible for what they do for clients. A Sydney psychiatrist, Dr Elizabeth O'Brien, says that sounds like psychopathy. Psychopaths have no conscience. Professor Monroe Freedman, a US legal ethicist, says if a rapist privately tells his lawyer he is actually guilty, the adversary system still demands that he cross-examine the victim to suggest she is promiscuous. Perhaps we can redefine the adversary system as a corrupt game controlled by lawyers some of whom are trained to act as if they are serial liars and psychopaths. And if the adversary system actually demands that the people who run it must pervert justice, it should be the tiniest of steps for judges and lawyers to say there must be something wrong with the system, and that we need a better one. Some are doing that.

(8) WA Chief Justice David Malcolm said in October 1999: "Historically, the concept of a fair trial has applied [only] to the accused. In my view, that concept needs to be changed - a trial should be fair not only to the accused but also to the victim and the prosecution."

(9) The term-get-the-guilty-off system comes from former lawyer Brett Dawson's *The Evil Deeds of the Ratbag Profession in the Criminal Justice System*. Evidence should be weighed, not suppressed; none of the rules for concealing it can survive rational analysis. The rules include one which prevents the judge and prosecution from commenting on the accused's refusal to give an explanation, although an explanation from an innocent person could reasonably be expected. There are rules against hearsay, patterns of criminal behaviour, and evidence said to have been improperly obtained. And there is a discretion to conceal virtually all relevant and probative evidence. Dawson says a criminal defence lawyer requires little intelligence; all he has to do is object to all evidence on the ground that it might prejudice his client.

(10) The sketch can be a jokey *melange* of description, anecdote, comment, and analysis. I first adopted it for the 1983 Wran Royal Commission. Michael Grove QC, counsel assisting, was apparently not aware that one way to bribe a public figure is to tell him the winner of a fixed horse race. Organised criminal George Freeman gave Chief Magistrate Murray Farquhar tips every Wednesday and Farquhar's clerk, Camille Abood, placed his bets of \$400-\$600 at the TAB and collected the winnings, but Grove did not ask Abood how good the tips were. When I noted the omission, Grove said: "I have been asked by an expert in Royal Commissions to put this question ..." Abood replied that Freeman's tips were 98-99 per cent winners. There is no copyright on the sketch; I was surprised that it was not until 1995 that another reporter, Kate McClymont, brilliantly used the sketch to report the Wood inquiry on systemic police corruption.

(11) Time is the problem; I managed it only twice. In 1981 I got a transcript of the Lanfranchi inquest and in six weeks assembled a chronology, *Death in Dangar Place*, of the known facts about Roger Rogerson, Warren Lanfranchi and Neddy Smith, and what happened on the day Rogerson shot Lanfranchi. The Fitzgerald inquiry provided the basis for a 1989 chronology of corruption in Queensland, *The Hillbilly Dictator*.

(12) Justice Harry Gibbs famously ran a 1963-64 Queensland police corruption inquiry on strict adversarial lines, including the rules for concealing evidence and cruel cross-examination of unrepresented witnesses. His associate, the Hon Dave Jackson QC (as he now is) advised the present writer that Harry had a fair idea that police were corrupt. However, his adversarial approach obliged him to find they were pure. As a result, police and political corruption in Queensland became quite brazen and was not unmasked until the Fitzgerald inquiry 24 years later. Harry, who sat on the High Court from 1970 to 1987, and was Chief Justice 1981-87, did not take up my suggestion that he apologise to the people of Queensland for getting his corruption inquiry so badly wrong.

(13) The investigative system is cheaper and more effective than the adversary system, and the 1988 ICAC Act specifically said ICAC was to be non-adversarial where possible. In 1990 former Justice Michael Helsham told ICAC's parliamentary oversight committee that he had no idea how the inquisitorial system works and advised the committee to find out. In 1991 the committee asked ICAC Commissioner Ian Temby to investigate and report. ICAC sought guidance from an authority on European systems, Bron McKillop, of Sydney University Law School, and he supplied background information in 1991. Commissioner Ian Temby QC and other ICAC staff spent \$77,290

March 1994 without a report, McKillop was asked to write the final report.

Justice Barry O'Keefe was appointed ICAC Commissioner in June 1994 but did not take up his duties until November 1994. In July McKillop supplied two new chapters showing where ICAC was wrong, but in August was advised they would be omitted from the final report. He told ICAC the chapters were "crucial" to the parliamentary committee's request, but they were suppressed from the report published in November 1994. In 1995 the parliamentary committee asked to see everything McKillop had written. In September 1995 O'Keefe gave the committee, under oath, material which apparently did not contain the missing chapters. ICAC (and other investigatory bodies) were thus able to continue to use the costly and truth-defeating adversarial techniques. The present writer pointed this out in *The Sydney Morning Herald* in June 2001 and that a committee of Parliament can imprison outsiders who knowingly mislead it. ICAC Commissioner Irene Moss then admitted, under oath, that ICAC had not had the missing chapters and that the material given to the committee in September 1995 was "probably" something McKillop wrote in 1991.

Moss said she did not know who suppressed the chapters in 1994. One of the remaining questions is thus whether Justice O'Keefe unwittingly gave the parliamentary committee false information in September 1995, and if so, who misled him. Public policy and public moneys are involved; it may thus appear that the parliamentary committee and the community, not to mention Chief Justice Jim Spigelman and the Judicial Commission, are entitled to an explanation from Justice O'Keefe.

(14) This rather undercuts the standard mantra enunciated by George Sharswood (1810-83), in *A Compend of Lectures on the Aims and Duties of the Profession of Law* (1854). He wrote: "The lawyer who refuses his professional assistance because in his judgment the case is unjust and indefensible, usurps the function of both judge and jury." If Dershowitz is right, in 100 fairly serious cases the judge and lawyers know that at least 90 are guilty but only about 30 will be convicted, defence lawyers having got off 60 they know are guilty. All this suggests that many defence lawyers know perfectly well their clients are guilty, and that Sharswood was doing what Justice Oliver Wendell Holmes said lawyers spend most of their lives doing: shovelling smoke.

The admirably candid Professor Dershowitz himself said: "Almost all of my own clients have been guilty ... I have only one agenda: I want to win. I will try, by every fair and legal means, to get my client off - without regard to the consequences. I do not apologise for (or feel guilty about) helping to let a murderer go free ..."

The equally candid Stuart Littlemore QC, who used to pontificate on *Media Watch* about reporters' ethics, or lack thereof, was questioned on Channel 7 in 1995 by Andrew Denton about defending people he knew were guilty.

"Well, they're the best cases," Littlemore replied. "I mean, you really feel you've done something when you get the guilty off. Anyone can get an innocent person off; I mean, they shouldn't be on trial. But the guilty - that's the challenge."

"Don't you in some sense share in their guilt?" Denton asked.

"Not at all," replied Littlemore.

As noted earlier, under legal ethics developed by lawyers in the get-the-guilty-off adversary system, Dershowitz and Littlemore are perfectly entitled to adopt that posture. By contrast, the code of conduct for lawyers in the European Union, adopted unanimously in 1998, says: "A lawyer must serve the interests of justice as well as those [of his clients]," and that a lawyer has "legal and **moral** obligations ... towards: the client, the courts [and] the public"; this requires "absolute independence ... A lawyer must ... be careful not to compromise his professional standards in order **to please his client** ..." (Emphasis added.) United Kingdom and Irish lawyers presumably don't take an oath to observe those obligations.

(15) The university at Bathurst does not have a law school, and so is not contaminated by the adversary system; it should start a law school to teach European methods exclusively.