

The Scandals We Deserve?*

Rodney Tiffen

I must admit that I have been enjoying the spectacle of the scandal currently dominating our news—the John Laws-Alan Jones ‘cash for comment’ inquiry. It has nearly all the ingredients that make scandals such irresistible fare for the media and for the public. At the moment we have the theatre of a public inquiry, and the sight of these two men, already very well known figures who arouse strong opinions in many, now being exposed in a very different way.

We see Alan Jones saying it was merely a coincidence that he made favourable comments about the Walsh Bay development a day after signing a six figure contract, claiming that he was unaware what he was obliged to do under various contracts from which he received hundreds of thousands of dollars. John Laws likewise is maintaining the sincerity of all his on-air statements, and we are asked to believe that it was pure good fortune that his personal convictions correlated so perfectly with groups who were prepared to pay him large amounts of money. As often happens as scandals gain momentum, the public hearings are the indispensable central source of news, but they are supplemented by a stream of revelations from elsewhere.

In this case inquisitive reporters have been rewarded by leaks from and about various parties, and stories of what I call ‘backstage behaviour’. Various sources at radio station 2UE seem less than enchanted by their two major stars, and so tales of avarice and arrogance have been forthcoming. As in all the most newsworthy scandals, the weighty issues of principle have been spiced up with juicy gossip.

As also occurs in many scandals, what previously seemed like solid alliances among the defenders have disintegrated as the pressure from the scandal increases. The key moment came when the chairman of the station, John Conde, directly contradicted

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John Laws' account of a conversation between the two of them. They have each now pitted their own credibility against each other. The conflict between them seems irreparable not only at a personal level, but in their conflicting interests in the inquiry's findings. This crossfire of conflicts greatly reduces the chance that the parties will be able to contain the revelations by stonewalling the inquisitors.

Like many scandals, this one also had a false start. Last year the Australian Broadcasting Corporation's Media Watch program made some of the most central allegations about John Laws and his sudden backflip—moving from a bank basher to an admirer overnight. In 1999, Media Watch also had a key document, an agreement between Laws and the banks. The program was immediately followed up by other news media. Once the scandal was under way, being pursued competitively by a range of reporters, it was self-sustaining at least for a few weeks.

However, a question just as interesting and important as why it exploded in 1999 is how it disappeared so quickly and completely in 1998. In particular this raises questions about 2UE management, and its wish not to find out anything uncomfortable. It did not want to know anything that might shake its money tree. Less understandable was the apparent passivity of the Australian Broadcasting Authority (ABA). This now is obviously the most important inquiry the ABA has conducted in its seven year existence. Like many scandals, this one raises issues to do with the politics of procedures and penalties, about what procedures are appropriate for exploring such a case. When the stakes are so big and public scrutiny so intense, little used powers are suddenly subjected to unanticipated pressures.

The issue of procedural propriety got most attention over the actions of ABA chairman, David Flint. Unfortunately for Flint, the hearing coincided with the republican referendum campaign, in which he was an ardent advocate, sometimes seeming to be the monarchists' court jester. Flint made an understandable but nevertheless important misjudgment by appearing on the Laws program in this capacity. After a flurry for several days, he disqualified himself from the inquiry. It is of course rare for a senior presiding officer to be forced to disqualify himself, and perhaps unique for some defence barristers to argue that he didn't have the right to do so.

However problematic and ambiguous the procedures, I am not referring primarily to the momentary furore surrounding David Flint. The much more important question is the adequacy of the Broadcasting Services Act, and what seems to be the oblique relationship between the law and the major issues of public morality.

For the first time, the changes which had been introduced as part of the Broadcasting Services Act in the name of self-regulation came sharply into public focus. It emerged during the inquiry that the ABA has no power to punish individuals, only the licensee, 2UE. This is an important difference from the powers of its predecessor, the Australian Broadcasting Tribunal (ABT), which on several occasions temporarily forced individuals off-air, for example for making racist comments. I do not remember anyone commenting on this loss of power when the Broadcasting Services Act was introduced in 1992. The general impression given was that the ABA would retain the powers of the ABT, but would function in a different way.

It makes it very interesting to consider what, if any, penalties may flow from the inquiry if wrongdoing is established under the Act. If 2UE retains its license, it may face huge fines. As a general principle, in order to act as a deterrent, fines must exceed by a substantial amount the money raised by the illicit behaviour. Perhaps the station will need to take a loan from its famous stars to pay the fine it incurs for their behaviour.

Similarly, these offences were only covered by industry codes, which meant that 2UE could not suffer tangible penalties on this occasion, only if they re-offended. When this ‘first offence is free’ doctrine came into public focus, there was much disquiet that neither the broadcasters nor the station could be punished for what they had done.

The scandal has exposed new questions about the regulatory regime which has allowed such abuses to occur, both in terms of the Act and of the agency meant to enforce it. It is noteworthy that we are having the current inquiry not because of investigative efforts by the ABA, but because of revelations in the media. Earlier this year we had an investigation into whether Channel Nine was showing too many advertisements. The charge grew not from monitoring by the ABA, but because of complaints by Channel Seven.

When the Broadcasting Services Act was introduced, it was based upon industry codes, a sensible approach that strives for consensus rather than confrontation between agency and industry. However the fear was always that self-regulation may come to mean no regulation.

This is the final point I want to raise from the current ‘cash for comment’ scandal. We like to think when considering corruption that our society makes continuing progress against it, that previous avenues for abuse are exposed during scandals and then closed off. However sometimes, as here in the name of deregulation, we get into reverse. In many ways Australia’s regulatory mechanisms had a better chance of coping with these transgressions in the 1980s than in the 1990s.

I have dwelt on the Laws-Jones scandal partly because it is so intrinsically interesting, but also to make some larger points. The interest in a scandal like this is most obviously in its content—who did what? Whose claims can be believed? What will be the tangible outcome? The content of each scandal is unique, commonly not directly comparable with other scandals.

But—as I have tried to indicate, not very subtly by the use of refrains like ‘as in other scandals’—the processes by which they develop fall into recurring patterns. Thus although the 1999 scandal came too late to include in my book, *Scandals: Media, Politics and Corruption in Australia*,¹ it has exemplified many of the arguments in the book about how scandals develop and the issues they raise.

I argued that while the development of scandals is not predictable, the ingredients which can make a scandal escalate into a crisis and dominate the news media are identifiable. I concluded that three factors together will result in a scandal which will dominate the news media. First, a central forum facilitating disclosure. An

¹ University of New South Wales Press, Sydney, 1999.

indispensable source for intense coverage is a public forum, normally either Parliament or a judicial or quasi-judicial setting.

Second, a constellation of conflicts escalating the scandal. The single most important issue here is an Opposition determined to exploit it for partisan gain. What will often really move a scandal from normal partisan conflict to a crisis is when a three-sided conflict develops.

And third, diverse elements of newsworthiness. Issues of high principle are fortuitously spiced with personal drama and human interest. What especially animates the media is a view that events are moving towards some great climax. It follows from this that the forces of reaction have only a loose relation to the seriousness of the offence.

The most contentious issue in scandals is not normally the truth or falsity of individual claims but issues of proportion—that a scandal received too much attention, that the consequences were disproportionately severe. There has not been a case in recent Australian politics of negative consequences for someone completely innocent, or of sustained media coverage built on false charges, but the sense of proportion has often been problematic.

It follows also that we must be aware of the political and media forces which make some transgressions more visible than others. In particular, the forces escalating attention to political scandals are much greater than elsewhere (and not because politicians are more crooked than others).

In many ways the process by which scandals develop in the news media is erratic and unedifying, and will remain so. It is centrally influenced by the pursuit of political interests, which may or may not align with the public interest. It is centrally influenced by news values, which again only align partially and erratically with the public interest. The search for scalps overwhelms the analysis of institutions and structures which give rise to disputes.

Moreover, progress made is not often visible in the news. For example, police corruption in the mainland eastern states in 1999 is probably much less than in 1989 or 1979, and probably previous decades, although of a different kind.

I said earlier that my scholarly interest in scandals derived from trying to articulate the erratic processes by which they escalate to (sometimes) dominate the political agenda and have far-reaching impacts. The other reason, of course, relates to their substance. The implicit stake in many scandals is the accountability of powerful figures and groups. In this way, I am interested in process in a different sense. When we see conflicts in politics or elsewhere, as spectators or as partisans, the focus is primarily on the result, on who wins.

My view is that scholars and journalists should be partisans not for one side but partisans for the process. This is against the spirit of the age. The popular attitude today is that it doesn't matter how you play the game as long as you win. Not only in sport, of course, are ends valued above means, but also in business, the bureaucracy and in politics. We value results-oriented managers. Our politicians' views these days

on both sides seem to be that due process is for wimps. This is part of the pressure towards the triumph of short-term perspectives, which is sometimes mislabelled as pragmatism.

In the long term the quality of the processes of our democracy is linked to its effectiveness and legitimacy. Even when they prove to be short-term inconveniences, we should act in ways which strengthen those processes that enhance the integrity of our public life.

The single most important institution in this regard is of course Parliament. We should be reminding our MPs that not only are they members of a party—they are custodians of our most important democratic institution. Instead we find there is a bipartisan consensus to extend, when in power, the prerogatives of executive government at the expense of parliamentary accountability.

The size and complexity of contemporary government means we also need to strengthen institutions which increase transparency in executive government and in the judiciary. This means strengthening, instead of abolishing, the functions of auditors-general and strengthening, instead of amalgamating, offices such as the Ombudsman and Independent Commissions against Corruption.

It also means the efficient functioning of freedom of information provisions. Finally it means a vigilant and active news media, which sees its role as not just to commentate on the prevailing political games, but to act as partisans for the democratic process.

The argument above is that the development of scandals is fanned by political interests, by opportunities for media reporting, and by how the developments match judgements of newsworthiness. It means that at times some scandals will receive attention heavier than some may judge is warranted—that we get a skewed and erratic view of scandals. In considering whether we get the scandals we deserve, we need also to consider the other alternative: what scandals are being neglected? In what areas is the potential for unchecked corruption increasing?

I want to nominate three areas which I think deserve greater media and political scrutiny.

The first is political funding. Journalists sometimes say that they neglect Parliament because that is not where the power is. However, there is an area central to potential power into which they almost never venture. Elections have become hugely expensive for political parties, and the efforts that they put into fund-raising is enormous. Some donors no doubt give contributions to aid our democratic process, or give equally to both sides as insurance. Others must expect that they will get some return on their investment. Both parties are conniving in charades that effectively conceal most of their donors. I think it is time we knew who gives what—how much money, if any, for example, private health funds donate to political parties.

The second area for concern is the increasing use of ‘commercial in confidence’ reasons for secrecy. As interaction between government, the private sector and community groups increases, it becomes increasingly important that the spending of

public money be done in a transparent way. The basic principle should be that if private groups want public money, the transactions must be open to public scrutiny.

The third point is really an extension of the second. We have had a coincidence in public sector management of trends towards the corporatisation of government activities, the privatisation of government entities, and of deregulation. Often these lead to micro-economic reforms which benefit the economy, and bring better service to the public. They increasingly also mean that the public interest is not confined to public service and to elected members.

This brings us full circle, back to 2UE. It was recently claimed that no pro-republican speaker appeared on the Alan Jones program in the six weeks leading up to the referendum. At the same time, the ABC's performance was being timed with a stopwatch. The argument is that the ABC is a public broadcaster and 2UE a private station. However, 2UE is also a publicly licensed station. It enjoys privileged access to the spectrum. It plays a role in our democratic life. What policies, if any, should govern its performance?

In terms of the current 'cash for comment' inquiry, the immediate stake is whether there is a penetrating and accurate account of the transactions. Most public attention will focus upon the fates of Alan Jones, John Laws and the licensee of 2UE, the Lamb family.

Beyond the fate of those immediately involved the larger stake will be whether the inquiry upholds the rights of the audience, and confirms the basic value that media audiences have a right to know when they are listening to paid speech and when to free speech, and whether it leads to a vigilant regulatory environment on guard against such breaches of the public interest.

Again in this scandal, as in so many others, the largest stake is whether it confirms or fails to confirm the public's sense of justice, and so again a scandal has focused our attention on the cutting edge of democratic accountability. Scandals for all their idiosyncrasies thus play an indispensable role in our politics. In the same sense that we deserve our democratic rights, we deserve scandals like this to explore and define the exercise of power and responsibility.



Question — I was disappointed that there wasn't a single mention of the sexual peccadillos of our politicians. However, I certainly support your points about the 'commercial in confidence' issue. It is certainly a scandal that so much public money is spent without disclosure. I am not talking about monies spent for genuine security such as defence of the Commonwealth—that obviously has to be a one-liner. But any other expenditure of the taxpayers' money should be open to examination publicly as well as by the Auditor-General. And that includes his examination of corporations.

However, there is a different point, which you did touch on, but only obliquely. Editors of our free press maintain strenuously that they require freedom and should

not be directed by the owners of the press. That, of course, is a fiction, as anybody who has read about what happened to the editors of the *Times* and the *Sunday Times* in England would know. Equally, the recent behaviour of the press in the lead up to the referendum indicates that, while editors are demanding alleged freedom—and use it legitimately in their editorials—surprisingly they do not accord it to their reporters. The overwhelming proportion of the press in Australia supported one side in the Republic referendum, even though the actual outcome shows that they were unable to effectively gain public opinion to that point of view. There is transparency required within the press as well as by the press against the type of scandals that you have been dealing with in your publications.

Rod Tiffen — It would be a very interesting exercise to look at the growth of the words ‘commercial in confidence’ in our public life. My guess is that fifteen years ago, you probably never saw it. Throughout the last decade it has been climbing and climbing. There may well be occasions where such a stance is justified. My guess is that more than 80 per cent of the time the phrase ‘commercial in confidence’ is inappropriately invoked. I think that all of us who care about the quality of our government should be mounting struggles against this insidious term. It is not 100 per cent insidious, but it is maybe 80 per cent.

I think that it is also a very fair point, and one that will meet with enormous resistance within the news media, to say that there needs to be more ombudsman procedures within the media. Some of the best newspapers in the world, such as the *Washington Post*, employ an ombudsman. I hesitate to say this, to an extent, because I think the last thing we want is a series of straitjackets. When I said that Alan Jones had not allowed any pro-republican speakers on his show, part of the appeal of that program is Alan Jones’ personality. It is very hard to get legislation that says that you can get balance by stopwatch, but you need to find a balance that allows some scope for the broadcaster—for their individual talents—and for the idea that this is not their sole private property, that this should not just be the Alan Jones soapbox. If you can do that in a non-draconian way, and if we could enlist the goodwill of the media, I’m sure that they would help find ways to get a more creative solution to those sorts of areas.

There are times when the powers of the proprietors are crucial. There are lots of other times when they’re not crucial. I think to some extent you can argue that the main press of this country reflect their most immediate constituency. They try to reflect the concerns of the principle audiences. But that isn’t always the only constituency in the country. That may provoke both a marketing and a professional consideration in the newspapers about how well they’re reaching out to other groups as well.

That’s a less than perfect answer, because the question you raised is a huge one that should continually be explored; issues to do with freedom of the press are not fought once and for all. They’re ongoing battles that sometimes have to be fought between the media and government or the media and corporations, and that sometimes need to be fought within the media.

As to sexual peccadillos, it has often been said that Australia has been much less productive of sexual scandals than say America or Britain, and there is some truth in this. Some have explained it in terms of a different Australian attitude. I’m a bit

sceptical about that. The Cecil Parkinson scandal in Britain involved his pregnant secretary and former lover coming forward and saying certain things. If there had been a sexual scandal involving Bob Hawke, for example, in which you had such a person coming forth, I think it could well have exploded. I would think, so far, it's partly a matter of the way sexual scandals have arisen in Australia. I do think that there are genuine dilemmas here. I always go back to the 1960 presidential election between Kennedy and Nixon, and from what we know, Nixon was the much more monogamous candidate. I don't know if that should have been the determining factor in who was going to be the better President after that election. So there are issues that I am not confident anyone is tackling very well, such as when sex scandals should legitimately enter into the public domain and when they should not.

Question — In light of the 2UE inquiry and the recent fiasco with tickets for the Olympic games, do you think that the drive for greater transparency which is now fuelled by the media will not be dashed in Olympic glory and corporate gloating after the Olympics? In other words, are you a pessimist or an optimist?

Rod Tiffen — The crucial thing to remember about the news media is that, of all the major institutions in our society, they are the ones with the fewest pressures towards consistency.

To give a slightly different SOCOG (Sydney Organising Committee for the Olympic Games) example: one week there is sudden outrage that we've got too many foreign bands in our opening ceremony, and the talkback shows and the *Daily Telegraph* start saying so—then the politicians suddenly say: 'this is becoming an embarrassment, we must reverse the decision.' The next week, it turns out that in doing so they have broken contracts, they have broken the hearts of Japanese and American band members who have been practising for a year or so; then suddenly the news media will switch tack, and say 'how could they have made this expensive and heartless decision?' The different sources dominate differently from one week to another. In that sense I would expect that, if things go well at the Olympic games and if they come in close to breaking even, many of these other issues may then be forgotten. But that's just a guess, and certainly it's created a lot of very real anger in the last few weeks. (I should admit here that maybe I'm not taking this seriously, because I got two of the three lots of tickets that I asked for.)

Question — It's Christmas 1998, and SOCOG invites you to it's Christmas party and says 'we've got all these tickets, and we've got to get them out somehow, but the last thing we want is any scandal or any controversy.' How would you suggest they do it?

Rod Tiffen — Being an individual of complete probity, integrity and good judgement, I would first of all have said that a Christmas party is not the proper place to discuss this. And then I would have looked at their books. They have got huge financial problems, as we know, and what I think they did was engage in what we might call 'official scalping'. Scalpers make their money because, as the event draws closer, the people who missed out are willing to pay more. So what SOCOG did was to cut out the middle man, centralise the profits involved, put fewer tickets on the market in the normal way, and hold these other tickets back. One can see from a marketing point of view how that may have had some marketing advantages and revenue advantages, but it was also an exercise in public deceit on a gross scale.

I don't think I am likely, by the way, to be asked by SOCOG for ethical advice or to attend their Christmas party.

Question — Regarding recent use of the term 'commercial in confidence'—I think for decades now certain of our trade statistics have been curiously not stated because of this problem. Statistics on certain products are simply not available. I also wanted to mention the commercial side of the media that you spoke of, and the curious reluctance, that is scarcely even mentioned, of the media to comment in their news items on companies which advertise in the papers concerned. This is something which has had a certain amount of public exposure in the case of, for example, Rural Press, which I think now owns the *Canberra Times*. But it is a very broad question, covering all newspapers. It is a question of asking how on earth you can do anything about it—I'm not sure even an ombudsman would be able to. But I suspect an ombudsman might be one person who may be able to.

Rod Tiffen — I think your historical point is accurate. As I understand it, the trade figures where you could say that one commodity was sold overwhelmingly by one company used to be left out, or was left vague. That is an important point. I shouldn't have implied that this is just a completely new thing, although I think it is now on a much different and more important scale than it used to be, say twenty years ago.

I would think that the disclosures that I'm talking about as being important to the quality of our public life apply also to the media. Many media have codes whereby journalists have to reveal, for example, whether they have shareholdings in a company they are writing about. That's all to the good. I would think also that it is time that there was a register, published annually, of what sorts of non-professional payments went to various figures in the news so that they gave their story exclusively to one group and not another. The stations argue that paying people like that is a way of enhancing the public's right to know. In fact it's the complete reverse, because those payments are not just to talk to, say, Channel Nine, but to refuse to talk to Channel Seven, Channel Ten, ABC and SBS. In that sense I think they're a threat to the free flow of information, especially if, after signing a contract with one, the questions then are very soft. There were some moves in this direction maybe two years ago, by Channel Seven and Channel Nine, but they fizzled out.

On the question of advertisers, I'm old enough to remember when it used to be said that the *Melbourne Herald* was published on the back of Myers ads. You could find all sorts of good news about Myers in the *Melbourne Herald*, but not very much bad news. The more diversified the sources of advertising, the more this is taken care of. But where it has become particularly acute is in the growth of supplements. In travel supplements, computer supplements, motoring supplements, there seems to be a reluctance to get stuck in too hard—it's started to fall more into the realm of infotainment, rather than journalism, with a reluctance to show things that may have gone wrong with various companies or industry standards.

As a friend of mine said, those travel programs are devoted to showing the sun, without the sunburn. I think that's right.

The news media would oppose it strenuously, but there is a bit to be said not just for declaring the individual journalist's shareholdings, but for declaring the amount that the newspaper gets in advertising from a company that they are writing about. I think this is a long way off, and it would meet with great opposition. I must also admit that I haven't thought through the practicalities of it.

Question — Towards the end of your lecture you outlined three areas or institutions of our society—one of them being the Parliament—which needed attention in regard to the stimulus that they may give, perhaps unintentionally, to corruption and the lack of probity in our society. I suggest that there is one that you didn't mention. There is an institution called the International Institute for Democracy and Electoral Assistance in Stockholm, which is a clearing house for ideas about democratic practice. It also gives advice and practical assistance to the development of democracy in countries that are relatively new to it, like those of the former Soviet Union, in the third world and in Eastern Europe.

It said quite recently about Australia: 'on the Australian model, compulsory voting will not only produce a marginal increase in turnout, but also increase the number of people who habitually buy or lie their way out of complying with the law.' What do you make of the impact on probity, intellectual honesty and honesty generally in this society of our system of compulsory voting? Bearing in mind that almost all other countries which used to practice compulsory voting have abandoned it in the last twenty or thirty years—one of the principal reasons for doing so being the destructive influence it was having on honesty in their societies?

Rod Tiffen — To tell the truth, I vacillate on that question. With compulsory voting, it has been argued that several of our elections are determined by those who swing at the last minute, who tend to be the most ignorant, and so forth, and that you may get a different result if only the more interested voters turn out. On the other hand, there is something to be said for a parliament elected by the whole population and not just by less than 50 per cent of the population, as you get in the United States at times. So I don't have a firm consistent opinion on this.

I would like to say two other things about it. One is a tale of my own hypocrisy, I guess. I had the privilege in 1994 of being a monitor during South Africa's first democratic election and it was a very, very moving time. The voting was to open at 8.00am, and by 6.30am people were already queuing in the voting booths, with queues half a kilometre long, because they were so keen to vote. Feelings were very strong on that day, and I thought, well, I must never take this right to vote for granted again. The first election that I came back to was a local council election and, because of a car mix up between my wife and me, I forgot to vote, and had to pay a fifty dollar fine. So I don't know that I'm best person to comment on your proposal.

I also think that a more important issue is the codes of conduct that we have for behaviour by parliamentarians and others—many of which are good in content. The question really is, who is to enforce them? Looking at the explosive question of whether a minister should be forced to resign, there are some unique aspects of the decision-making process, the most important one of which is that that decision is the prime minister's, as the leader of the same party that the alleged transgressor belongs to. I would like to see not only a strengthening of such codes, but their enforcement

moving towards a more independent body. That is more important than the issues you mentioned. That would be one of the more important moves for raising the conduct of our public life.

Question — Regarding the power of the press, and the freedom of the press, who has the final say? The editor or the proprietor? It's keeping the people in the dark, in ignorance. How would you view that?

Rod Tiffen — In the private media, on those issues that really count to them, you could argue that the proprietor has the final say. Certainly in theory, the proprietor always has the potential for the final say. Most of the time, that is a power that is not exercised. However, what is perhaps more important is that on the whole we have a middle management in these news organisations who are keen to please their superiors—sometimes more keen to please their superiors than the superiors may want.

A recent case that comes to mind—and I don't know if I'm being too parochial here—is the Murdoch press' coverage of the decline and possible disappearance of the South Sydney Rabbitohs Rugby League Club. Essentially, for their corporate strategy, News Limited wanted them to disappear, and yet there was an uprising of popular sentiment against it. One would have thought that this was a perfect *Daily Telegraph* story. I think it was the second or third biggest demonstration in the last five or ten years in Sydney, with Ray Martin, Andrew Denton, a host of celebrities, Laurie Brereton and I think a Liberal MP as well, at the Town Hall. Yet it barely got covered in the *Daily Telegraph*. That, to me, was not a decision made on the intrinsic merits of the news story, but a decision made on the corporate interests of the Murdoch corporation.

I think in stories like that, the proprietor's say rules. On the other hand, you could not run a good newspaper that maintains its credibility with its readers if you did not trust your reporters and editors to make professional news judgements most of the time. So proprietorial intervention is relatively rare. I think middle management's desire to please the proprietors is somewhat more common, and I think that together these things probably influence a fairly small proportion of all our news, most of which is done by the journalists and editors on what they consider are the intrinsic merits of the issue. That's probably too vague, but it is the best I can do.