

Lady Chatterley Unleashed In Canberra



On Sunday 17th February 2008, Dalton's Books in Canberra played host to the ACT release of the official history of the New South Wales Council for Civil Liberties. Written by Dorothy and Scott Campbell, the book's official title is *The Liberating of Lady Chatterley and Other True Stories*.

On hand to help unleash the book on the general public was former judge, Deputy Commissioner of the Australian Industrial Commission and NSWCCL stalwart, Jim Staples, who gave an impassioned and historically enlightening speech. You can read the full transcript of his speech on page 9.

(all pics: Heather Campbell)

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Journal deadline dates:

Material Deadline: 7 May 2008
We may not be able to accept documents that are not sent on disk or by email attachments. Digital images will be accepted.
Articles: 1000-2000 words, reviews: 500 words and letters: 200-300 words



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COMMITTEE MEETINGS

Meetings are usually held at 6.30pm on the fourth Wednesday of the month, at the Sydney Town Hall. Members are welcome to attend as observers.

SUBCOMMITTEE MEETINGS

Subcommittees usually meet monthly. For further information, please contact the Executive Secretary who can put you in contact with the relevant convenor.

Against the Death Penalty

Convenor: *Michael Walton*

Australian Prisoners Abroad

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Civil & Indigenous Rights

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Publications

Convenor: *Jeremy Adair*

Views expressed in this journal are not necessarily those of the editor or the New South Wales Council for Civil Liberties Inc.

NSWCCL HITLIST

The following are activities in which NSWCCL has recently been or is currently involved in. For more information, read the relevant subcommittee reports further in the journal, or contact the NSWCCL office:

office@nswccl.org.au - t: 02 9960 7582 or log on to the NSWCCL website at: www.nswccl.org.au

- 1. United Nations 60th Anniversary logo:** NSWCCL has obtained permission to use the UN's official "60th anniversary of the Universal Declaration of Human Rights" logo. The logo will be included on all significant documents produced by NSWCCL.
- 2. Guardianship Tribunal:** Former detainee in Villawood Detention Centre, who was stateless and had been in immigration detention for over 4 years, is granted a special humanitarian visa. (see Legal Panel Report for details)
- 3. Against the Death Penalty:** NSWCCL updates proposed federal Bill to adopt into domestic law the 2nd Optional Protocol to the ICCPR. CCL will take this Bill to a cross party working group of federal parliamentarians in March 2008. (see Against the Death Penalty Report for details)
- 4. APEC Demonstration:** APEC demonstrator assisted by NSWCCL has various charges withdrawn and dismissed in the Local Court. (see Legal Panel Report for details)
- 5. Police powers:** NSWCCL speaks to a number of media organisations on the proposed (and attempted) use of Tasers by different state police forces. (see Secretary's Report for details.)
- 6. Asylum Seekers:** Mr Ali Al Jenabi, referred to as the 'Oskar Schindler' of people smugglers (as reported in the last journal), was finally issued a Removal Pending Bridging Visa until such time as he can be removed to Iraq. (see Legal Panel Report for details)
- 7. Book Launch:** Written by Dorothy and Scott Campbell, the official history of NSWCCL, entitled *The Liberating of Lady Chatterley and Other True Stories* had its Canberra launch at Dalton's Books on 17th February 2008. A speech was delivered by former judge and Deputy Commissioner of the Australian Industrial Commission, Jim Staples.
- 8. Submission:** to the NSW Sentencing Council Inquiry into Reduction in Penalties at Sentence.
- 9. Submission:** to the Australian Law Reform Commission inquiry into the Freedom of Information Act 1982 and related laws (setup by previous federal Attorney General Philip Ruddock).
- 10. Interns:** NSWCCL set to take on two more interns from New York University to assist in submissions and other activities.
- 11. Against the Death Penalty:** NSWCCL finally obtains federal documents that show that the previous federal government made a conscious decision to 'revise' Australia's universal and consistent opposition to capital punishment 'in light of the government's strong stance on terrorist offences'. (see Against the Death Penalty Report for details)

Message from the Editor

A lot has changed in the last six months both here and abroad. The change of federal government in Australia has resulted in a new outlook on how parliament has approached civil liberties. In the first one hundred days in office, the Rudd government has made the right noises on a number of civil liberties issues such as indigenous rights and acted proactively in matters of immigration and refugees. These are welcomed by Civil Liberty, but this should not lead members to think that the foot should be taken off the accelerator of civil

liberties and that the ship of equality is finally righting itself.

On the contrary.

The last twelve years has surely taught us that, as the saying goes, 'The price of liberty is eternal vigilance' and that perhaps now is the time to really push for the changes that we all feel this country needs. Keep your membership going and continue getting others to join.

Reports

CENSORSHIP SUBCOMMITTEE

The Censorship environment for 2008

One of the last acts of the Howard government was to appoint Donald McDonald as director of classification. In his initial speech, he described the current classification system as representing "sensible balancing". It is the committee's task to demonstrate that in fact the system is not well-balanced. In particular, the refusal of classification to Philip Nitschke's *Peaceful Pill Handbook* is an assertion of a moralistic viewpoint on the population which totally lacks balance.

Other significant anomalies are the peculiar system relating to X classified films – available only in the ACT and parts of the Northern Territory, and the lack of an adults-only classification for computer games.

The sub-committee hopes to make progress this year on these issues.

"Chinese style" internet censorship

In early January 2008, the new Minister for Broadband, Communications and the Digital Economy, Senator Stephen Conroy, confirmed the government's intention to proceed with a legislated internet filtering system designed to filter pornographic and violent content. This proposal generated an enormous amount of media interest, and responses from a wide range of organisations in the IT and communications industry, as well as NGOs.

Stephen Blanks
Convenor
Censorship Subcommittee

'Le devoir, c'est ce qu'on exige des autres.'

Alexandre Dumas

CIVIL & INDIGENOUS RIGHTS SUBCOMMITTEE

The Subcommittee has met once so far.

Freedom of Information. The Australian Law Reform Commission has just begun its inquiry into the FOI Act. The process will take most of the year. Michael Walton has submitted a list of issues which CCL recommends that the inquiry examine.

The Haneef Inquiry. It is proposed that a CCL submission be prepared in anticipation of a short inquiry into the Haneef affair.

The day of the meeting, Mick Keelty's address on censoring coverage of evidence during terrorist crime proceedings had been given publicity. It was proposed that, unless response in the media was adequate, that (i) a CCL opinion piece should be submitted to the Herald and (ii) that a request should be made to the Sydney Institute for CCL to give a reply. (Subsequently a substantial amount of material opposing Keelty was published.)

The Citizenship Test. It is proposed that a CCL submission should be prepared for the proposed inquiry into the questions. The submission should be dismissive of the test itself, but also argue that some questions are even more absurd than others.

Equal Rights for Gay Men and Lesbians, Including Marriage Rights. A submission should be prepared in time for the promised Federal bill.

Indigenous matters. The addition of indigenous justice to the responsibilities of the subcommittee raises issues of where we can make a useful contribution. Proposed matters include working for a treaty, supporting rights at risk during the Northern Territory intervention (noting that the ALP is committed to a review), supporting compensation for the stolen generations once the apology has been made, supporting native title and self-determination. It was agreed that a check should be made with indigenous organisations before new campaigns were embarked upon.

Mandatory Sentences for Murder of Police Officers. It was noted that a private member's bill in the NSW parliament did not at present have major party support. The situation needs to be watched, and letters prepared to be sent to MPs and to the Herald.

Civil Rights of Mentally Ill Persons. The Subcommittee has several members with a professional involvement in these issues. Though no immediate action was proposed, the area is within the brief of the subcommittee.

Refugee Matters. Opportunities should be taken for attempting to reverse mandatory detention. The plight of a group of refugees in danger of being re-enforced from Indonesia was discussed.

Matters for other subcommittees. It was agreed that the Criminal Justice Subcommittee should be asked to take up the cause of persons on remand, who lose many rights, even though many of them are later found not guilty or have their charges dropped.

Meeting dates. It was agreed that meeting dates should be changed to the first Wednesday of each

month, provided that did not prevent others from attending.

*Martin Bibby
Convenor*

Civil & Indigenous Rights Subcommittee

'I just want you to know that, when we talk about war, we're really talking about peace.'

George W. Bush

AGAINST THE DEATH PENALTY SUBCOMMITTEE

Regular readers of Civil Liberty will know that the subcommittee has been examining the law and policy of capital punishment and also attempting to obtain documents under freedom of information. Both of these efforts have borne fruit over the last two months.

The subcommittee released a law reform discussion paper, which canvasses 11 areas of reform. The main proposals involve reviewing extradition, mutual assistance and police-to-police assistance law. The discussion paper also calls for changes to legislation to ensure that the AFP respect and protect human rights. The subcommittee also highlights the need for legislation to control how Australian agencies share information across international borders. The full discussion paper is available on CCL's website at:

www.nswccl.org.au/docs/pdf/dp%20law%20reform.pdf

The subcommittee has also updated the proposed federal Bill to adopt into domestic law the Second Optional Protocol to the ICCPR. The Bill now has a preamble. Members of CCL will be taking the Bill to a cross-party working group of federal parliamentarians in March 2008. Hopefully, the Bill's time has finally arrived. The Bill will ensure that the States cannot reintroduce the death penalty. You can read about the Bill on CCL's website at:

www.nswccl.org.au/docs/pdf/bp4%202005%20op%20paper.pdf

For over two years, the subcommittee has been trying to obtain documents to determine exactly what Australia's anti-death penalty policy is. This is particularly important given that John Howard and several ALP leaders refused to condemn all executions. Finally, with the election of the new government, more information than ever before has been released.

Australia has an international obligation not to expose any one in any circumstances to the real risk of execution. What the confidential government documents show is that, since 1998, Australia has been deliberately breaching those obligations.

In the late 1990s, the Howard government decided that Australia could assist in foreign death penalty cases without a guarantee that no one would be executed. This violates Australia's international obligations and was a significant break with past practice.

The confidential internal documents show that the Howard government made a conscious decision to 'revise' Australia's universal and consistent opposition to capital punishment 'in light of the government's strong stance on terrorist offences'.

After the horrific Bali bombings of October 2002, the Howard government authorised the AFP to collect evidence and statements and to subpoena witnesses to assist in the conviction and sentencing to death of the Bali bombers. Of course, Australia should cooperate to bring terrorists to justice, but it should do so in a manner consistent with human rights.

CCL has consistently condemned acts of terrorism as gross violations of human rights. The victims of terrorist acts and their families deserve our deepest sympathy and condolences. However, Australia has a longstanding principled opposition to the death penalty. Australia respects the right to life of all individuals – no matter their crime. We should not be assisting in the court cases of people who could be executed.

The confidential documents show that the government had flawed legal advice stating that Australia's human rights obligations do not extend beyond our borders or beyond individuals in the custody of Australian agents overseas.

This advice is clearly wrong. It is inconsistent with Australia's obligation not to expose anyone in any circumstances to the real risk of execution. Following the government's legal advice to its logical conclusion, it authorises AFP and ASIO officers to assist their foreign counterparts in violating human rights – so long as they do it abroad and their counterparts are the ones detaining the victims.

You can read a detailed guide to the FOI documents at:

www.nswccl.org.au/docs/pdf/dpfoi%20guide.pdf

*Michael Walton
Convenor*

Against the Death Penalty Subcommittee

'Anyone who doesn't regret the passing of the Soviet Union has no heart. Anyone who wants it restored has no brains.'

Vladimir Putin

LEGAL PANEL SUBCOMMITTEE

This month there were a number of cases (new or ongoing) in which CCL has organised legal representation.

Guardianship Tribunal

CCL organised for Tom Brennan, barrister, to appear in the Guardianship Tribunal on behalf of a former detainee in Villawood Detention Centre. Last year the detainee had a Guardianship order imposed on him even though he did not meet the mental health criteria. The Tribunal allowed the previous order to lapse. Separately, the Minister for Immigration granted the person, who was stateless and had been in immigration detention for over 4 years, a special humanitarian visa.

APEC Demonstration Court Case

CCL organised for Paul Arblaster, barrister, instructed by Stephen Blanks, solicitor, to appear in the Local Court for an APEC protester who had been charged with offensive language and resisting arrest. After lengthy representations were made to the Commissioner of Police, the resist arrest charge was withdrawn, and the offensive language charge was dismissed under s.10 of the Crimes (Sentencing Procedure) Act.

Mr Al Jenabi

Stephen Blanks is the solicitor for Mr Al Jenabi. Mr Al Jenabi was extradited from Thailand to Australia in February 2003 to face charges under the Migration Act of facilitating the bringing of people into Australia, knowing that upon entry they would become unlawful non-citizens. He was convicted in September 2004 and sentenced to eight years' imprisonment with a non-parole period of four years, backdated to June 2002.

In January the Federal Court indicated that it would issue an order for mandamus against the Minister for Immigration and Citizenship ordering him to make a decision on Mr Al Jenabi's protection visa application. Following the decision of the Federal Court the Minister, Senator Chris Evans, refused an application for a Protection visa on character grounds due to the serious nature of Mr Al Jenabi's crime. The Minister issued a Removal Pending Bridging Visa, authorising Mr Al Jenabi to stay in Australia until such time as he can be removed to Iraq.

*Michael Bozic SC
Convenor
Legal Panel Subcommittee*

'In time of war the laws are silent'
Marcus Tullius Cicero

AUSTRALIAN PRISONERS ABROAD

2007 has been a year of slow and steady progress in respect of our work with Australian prisoners held in foreign jails.

Thailand – Jane McKenzie and Deborah Spinner

The best news for 2007 was that Jane McKenzie and Deborah Spinner were granted Royal Pardons by the King of Thailand and were released from prison in NSW.

I visited Jane and Deborah in the women's section of the 'Bangkok Hilton' almost a decade ago. They had been convicted of serious drug offences and were originally sentenced to death, though the sentences were commuted to 50 years each on appeal. Both Jane and Deborah were young mothers at the time and each had two children. There were no prisoner transfer treaties in existence then.

Jane and Deborah's plight, and their seeming abandonment by the Australian Government, led to a campaign by NSWCCCL for Australia to negotiate a prisoner transfer treaty with Thailand. The campaign was successful and Jane and Deborah were among the first Australian citizens to be transferred back to an Australian jail, allowing them to see their families for the first time since the death penalty was first imposed.

The prisoner transfer treaty with Thailand led to further bilateral treaties with Hong Kong and Cambodia, and we have also entered into a multilateral treaty that covers around 60 countries.

Jane and Deborah's campaign was the genesis of the current work of the Australian Prisoners Abroad Subcommittee. Their release was most welcome and a satisfying conclusion to a very successful campaign.

Cambodia – Gordon Vuong

The plight of Gordon Vuong remains high on our agenda. Gordon was arrested in Cambodia when 16 years old for serious drug offences. Following a trial in which he received inadequate legal representation, he was convicted and sentenced to 13 years imprisonment - an extraordinary sentence for a juvenile in relatively harsh conditions. To the credit of the Australian Government, a Prisoner Transfer Treaty between Australia and Cambodia was entered into late last year but the administrative machinery in Cambodia necessary to give effect to the treaty is taking a long time to implement.

In the meantime, Gordon awaits a date for his appeal against sentence to be heard, with no knowledge of when a date might be set (and he has been waiting almost a year now). One would hope this occurs soon, especially given Gordon's juvenile status at the time of his arrest. And the very fact of an outstanding appeal renders Gordon ineligible for a prisoner transfer. We

are currently liaising with Gordon's legal representatives and the Attorney-General's Department about issues associated with his potential transfer.

Bali Nine

It has been slow progress this year for the Bali Nine. For some, their fate remains undecided and gloomy. For others, there is still no prospect of a transfer back to Australia as we have no treaty in place with Indonesia. The NSWCCCL is currently assisting some of the families of the Bali Nine and continues to actively lobby the Federal Government to make the strongest representations to the Indonesian Government to grant clemency against the death penalty in the event all appeals fail. We are also continuing to actively lobby for a prisoner transfer treaty with Indonesia as a matter of urgency.

Thailand – Robert Foley

This year we successfully assisted an Australian prisoner, Robert Foley, to obtain funding from the federal Attorney-General. Mr Foley had been in Bangkwang Prison in Thailand for almost a decade but was flown to Italy pursuant to an Italian extradition order. He was apparently convicted and sentenced *in absentia* by a court in Rome. The funding will assist Mr Foley to obtain the necessary legal representation for an appeal.

Handbook

We have also been working on a handbook that can be used to assist those wanting to help Australians being held in foreign jails, whether they be CCL volunteers or families and friends of the prisoners themselves. We anticipate the handbook will be completed by mid-2008 and made available on the CCL website.

*Kevin O'Rourke,
Convenor,*

Australian Prisoners Abroad Subcommittee

'Bad laws are the worst sort of tyranny.'

Edmund Burke

SECRETARY'S REPORT

UN 60th anniversary logo

NSWCCCL has obtained permission to use the UN's official "60th anniversary of the Universal Declaration of Human Rights" logo. The logo will be included on all significant documents produced by NSWCCCL.

UTS Intern

Cymbeline Johnson, who is currently completing the final year of her BA Communications (Social Inquiry)/ Law degree, will be an intern at NSWCCCL for first semester 2008.

NYU Interns

Jessica Lau, one of the 2007 NYU interns, posted the following on the NYU web:

"The New South Wales Council for Civil Liberties is seeking two legal interns for next summer. This is the fourth year that CCL hopes to host interns from NYU.

Last year, Matt Hallinan and I worked with CCL for ten weeks, and we both wholeheartedly recommend the internship. It's a great opportunity to gain exposure to a variety of issues related to civil liberties. There is also the flexibility to pursue any particular issue that interests you. While projects are always changing, last summer, our work dealt with:

-freedom of speech/censorship

-human rights, incl. Australia's responsibilities under UN Conventions

-refugee/immigration (incl. visiting immigration detention centres to work with asylum seekers and working on legislation related to citizenship)

-indigenous rights

-criminal sentencing

-privacy/national ID card

-right to protest

-campaign for an Australian bill of rights

We had the opportunity to participate in meetings with other NGOs, legislators, and government officials and also to attend a conference at the Univ. of New South Wales law school. Great for anyone interested in civil liberties, international law, or human rights, and also for people with no prior experience in any of those areas (like me)."

As a result of this report, we have received about 8 applications for 2008 internships, including from NYU students based in Singapore, Brazil and Canberra. We are hoping to again host 2 interns.

Resignation of Joanna O'Shea from Committee

Joanna O'Shea has resigned from the CCL committee because she has been accepted into the Australian Youth Ambassadors for Development program, and is heading to Papua New Guinea to work in the Juvenile Court for a year. We thank Joanna for her contribution to CCL

*Stephen Blanks,
Secretary, NSWCCCL*

Obituary

Peter McGregor (1947-2008)

It is with great sadness that NSWCCCL heard the news of the death of Peter McGregor, a well-known activist for a great many causes, a humanitarian and NSWCCCL member.

From a young age, Peter took an interest in apartheid and was one of the pioneering organisers of anti-apartheid protests in the early 1970s. The *Sydney Morning Herald* recently reported that a letter that he co-wrote to Sir Donald Bradman – who was then head of the Australian Cricket Board – that urged the Australians not to play against a team that was selected on racial grounds, was declared by Bradman's son to be the primary reason that caused his father to act accordingly.

The British cabinet Minister Peter Hain also recently name-checked Peter McGregor as an important figure in organising anti-apartheid protests in those heady days. But of course that was but one of many causes that Peter championed throughout his life.

The Vietnam War, censorship, the plight of Aboriginal Australians, climate change, the Ananda Marga conspiracy case, East Timor, asylum seekers and David Hicks. These were all subjects worthy of his energies.

Peter also came to blows with NSWCCCL recently which he felt did little to assist him after he was ejected from the University of New South Wales after attempting to make a citizen's arrest on Philip Ruddock for war crimes. Not an unreasonable action, many would agree. This led to him protesting outside NSWCCCL's fundraising dinner late last year.

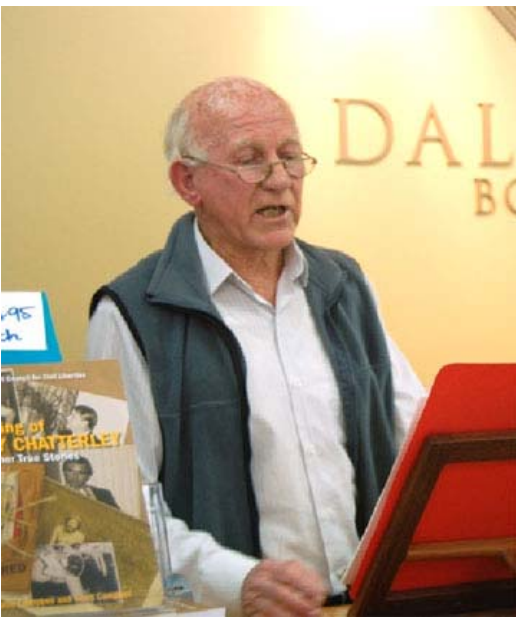
Peter had dementia and tragically took his own life before it overcame him. His loss has been felt deeply by people in many organisations which benefited from his tireless work. Our thoughts and best wishes go out to Peter's family at this saddest of times.

Book Launch

LADY CHATTERLEY RELEASED IN CANBERRA

On February 17th 2008, Dorothy and Scott Campbell launched their history of the NSWCCCL, 'The Liberating of Lady Chatterley & Other True Stories' at the ACT at Dalton's bookshop in Canberra. There to provide a rousing send-off was Jim Staples, a foundation and active member of NSWCCCL and a former Judge and Deputy Commissioner of the Australian Industrial Commission. The following is a transcript of his impassioned speech. (Photo: Heather Campbell)

There is a prevalence of authoritarianism in our public affairs which is deeply rooted in our convict origins, in our origins in chains or in property under the discretions of colonial Governors. We have not escaped from that past. This is one story of matters taken from the recent past.



Storytelling stands large in the life of every society. In all sorts of subtle ways we take order and understanding of the scheme of things from the stories we read and hear. Without history books there would be less moral guidance for those who take clarity in life from the books of religion, without history there would be no intelligible grasp of the common law, of parliamentary forms, of the constitutional distribution of civil power. History can reveal the reason – and the unreason – of modern rules. Things stand in better order under the guidance of the story tellers.

The New South Wales Council of Civil Liberties began a movement of great importance across Australia. The

authors of this work have selected out nine claims that were put in issue over time. There were others to which a want of space has denied a full account. In this splendidly written, helpfully arranged and detailed history of the CCL we see the work of a voluntary association of laymen, academics, lawyers and some prominent politicians acting together in Sydney after 1963 under an unstated determination to drag civic affairs in the town into the second half of the twentieth century, already bulking large in Europe and North America.

No one put it that way, but that was the work in hand.

It was a new age – the age of the Qantas Boeing 707 and 747 jet to London, of a new Europe, an awakening Asia. Carnaby Street and Bali called the youth away.

The multilith press rescued the articulate from the established printing houses, their magazines and newspapers. It was the age of Vietnam and conscription, marihuana, LSD, Bob Dylan, the Beatles, women's liberation, green bans, and the claim across the community that a woman had a right to choose.

The CCL was a citizens' voluntary institution that spawned public institutions, State and Commonwealth legal aid, the Ombudsmen, the Aboriginal Legal Service, and services advertised under the letter A in the yellow pages of the telephone book, to name a few.

No one can gainsay their contribution to our public life. They forced a new class of person into the judiciary and the magistracy. They forced new thinking into the prisons by way of constant exposures and a Royal Commission.

The old world had to give way: it was pushed away and it pushed determinedly back.

The CCL was a numerous, active, coherent, lively, disparate group. People were far from one mind, but there were common purposes, and morale was always of a high order. It was strangely unmarked by party loyalties, by personal strife and rivalry. There were many people who went far in later public life, but no one comes to mind who sought to make his way in the CCL to go on to greater things. Not many broad voluntary associations around a political cause survive for three years or more. This one has survived to this day, and spawned like groups in every State and in the ACT, each acting according to its lights.

I wish to put the CCL into a large context stretching far back beyond the provocation given for its formation in 1963.

We should not congratulate ourselves too much for our open society, for our parliamentary democracy, our electoral system, our press and our courts. There is no perfection there, nor ever will be, nor in every one who wields the public powers. Let me go back quite a way in time to a case that illustrates an abuse we must always keep in mind. Sometimes matters are overlooked or distraction allows them to slip through. Sometimes distraction is deliberately provided in our way.

Abraham Lincoln in 1863 at a ceremony in a cemetery on the battlefield at Gettysburg during the Civil War said in his address:

“Fourscore years and seven ago our fathers brought forward on this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal. Now we are engaged in a great civil war ...

We are met on a great battlefield of that war...We here highly resolve that this nation shall have a new birth of freedom; and ...that government of the people, by the people, for the people shall not perish from the earth.”

You might call this a determination for democracy. Democracy is a word we take from Ancient Greece, from the fifth century before the Christian era, for a signal example of a form of government.

Yet there is no clearer illustration of the dangers of rejoicing in the forms rather than in the substance of freedom in human affairs, of freedom in civil society, than is to be found in Athens in that century.

Athens had a hundred years before grown to be the mistress of a great empire, administered by rules and a system of government widely understood and accepted.

The sovereign power in the state was the Assembly, of which every citizen was a member, attendance at which was compulsory. There were some fourteen thousands persons so compelled, another five thousand or so without that right and duty. We know this from a census of the day.

There was no representative government, no intervening responsibility of ministers. The Assembly directly administered the city and the empire. Each citizen each day was in direct contact with matters of state and of imperial importance.

The citizen heard questions of foreign and domestic policy, of peace and war, of treaties and alliances, of domestic administration, of legislation, all keenly and ably argued on every side. He himself had to examine, weigh and decide. Every citizen was required and was by lot directed to serve on the jury in trials of the day.

He sat with five hundred of his fellows on the one matter.

There was no global verdict given. Each person accused was entitled to a separate verdict directed to him alone. In civic affairs the Athenian was an educated man in the widest sense.

To an Australian today there is at once a contrast here. Irene Moss has reported, from her enquiry about restraints on freedom of information, that she had found more than 500 separate legal provisions in 335 separate state and commonwealth acts denying the public access to information held by public authorities.

That fifth century was the most splendid period of Athenian history. It was in this time that the Parthenon was completed. It was the time of a wonderful outburst of genius in art, literature, philosophy, statesmanship and science. Athens was replete with intellectual and political activity. There were men of poetry, history, sculpture and architecture about the city every day. It was the era of Aeschylus, Sophocles, and of Pheidias. It was the age of Pericles, of Thucydides, of Aristophanes, of Plato, Euripides and Xenophon.

In the year 399 BCE an instructive criminal trial occurred.

The circumstances in their general nature are utterly familiar to us in modern times. In twenty years of war Athens had by then lost its empire, its sea power was destroyed, and with this the oligarchs of the city lost their pre-eminence, their wealth and authority.

Sparta not long before the year of the trial had put in place in Athens for a very short time a puppet regime, quislings taken from the Athenian oligarchy. It did not last. Life was renewed but Athens was in vast disarray. A scapegoat was needed by the displaced, disgraced politicians to explain the overthrow of Athens's fortunes.

You would not expect that such a lively interacting community as Athens would give us the precursor trial of that of the Witches of Salem. For those in disfavour there was no one so convenient to point at than one who had long been questioning received morality in public affairs, challenging the rationale of matters deemed to be close to its traditional stability and success.

You would not expect a man to be put on trial in the city of historians and philosophers charged with not believing in the gods of the city, of introducing new divinities, of corrupting the youth, that he would be convicted and sentenced to death. I speak of Socrates. He was then seventy years of age, his friend Plato who tells his story was twenty eight.

Socrates had persistently for years before the fall challenged the plausibility of the Sophists, the ideologues of Athens, for their promotion of the city's form of government. He had irritated them with his

close questioning of their arguments and ideas. In the theatres, Aristophanes had railed against him.

His prosecutor argued that he should be sentenced to death for contempt of the constitution, for criticizing the aptness of choosing officials by lot, for other matters of political advocacy.

The jury condemned him by 281 votes to 220. Socrates took the hemlock proffered with his own hand. In that procedure of what we call democracy celebrated by us to this day was done a great intellectual and moral wrong. The prosecution was an act of political opportunism done in repression of a critic in public affairs.

We pass to Italy and Spain. We remember that Galileo was convicted before the Inquisition for refusing to give over his findings in his science of astronomy. We know of the wildest excesses in repression under the Inquisition in Spain.

It was a Spaniard (Servetus) who in that time argued that to kill a man for his doctrine was not to kill a doctrine, it was but to kill a man, as it had but been to kill Socrates.

In the 1790s came the French Revolution. Liberal criticism of repressive political institutions indulging the claims of the French aristocracy and its kings had long been rampant. No critics were more unbending, more widely respected in that time than Voltaire and Rousseau.

Neither lived quite long enough to see the downfall of the 'old régime', and the proclamation of "liberty, equality and fraternity". Was it not Voltaire who had proclaimed that he may not approve of a man's ideas, but he would defend to the death his right to utter them? And was it not Rousseau who had argued in the same days: "Men are born into this world naked and equal, but they live in it utterly unequal, and it cannot be said that they do this out of free choice: everywhere man is in chains. Men run to meet their chains thinking they secure their freedom, but although they have reason enough to feel the advantages of political establishment, they do not have enough experience to foresee its dangers."?

The French Revolution gave us the Declaration of the Rights of Man and of the Citizen. It found a quick counterpart in the proclamations of the American Revolution. True to Rousseau's caution, the French Revolution gave us The Terror and Dreyfus, the American Revolution gave us J. Edgar Hoover, McCarthyism and the Patriot Act. The invasion of Iraq gave us our own revolution, the overthrow by John Howard of our constitution.

And so we come to Australia, passing from the Assembly in Athens and the pursuit of open covenants openly arrived at, to the secret plotting for the war in Iraq between Washington and Canberra. From long before the killing of a million Iraqis commenced with

shock and awe Howard had consistently and constantly lied to us about his discussions and commitments to the American cause.

Howard made four trips to Washington in the twelve months or so before the war, but he said not a word to us about his engagements. He sent away our soldiers without a discussion in his cabinet, without a debate and a vote in his party room, without a debate and a vote in the Parliament. For six weeks before the overt aggression on 19 March 2003 our soldiers were already engaged in Iraq in military action.

He acted outside of and in defiance of a constitutional provision limiting us all, including John Howard, to acts for the naval and military defence of the Commonwealth and of the several states and no more. What urgency was there in Iraq that matched the sudden strike of the Japanese on 7 December 1941 on Honolulu - on Hong Kong and Singapore on the next day, 8 December?

Our government of the day, on 16 December 1941, took the question of a declaration of war on Japan to Parliament. It had been dealing with Westminster out of identity with and loyalty to the Empire which included those impermanents Hong Kong and Singapore as well as the home country. Curtin and Evatt did not claim we could act against Japan outside the constitutional limitation to the naval and military defence of the Commonwealth and the States, although Menzies had assumed in 1939 we would act against Germany and Italy as a matter of course by reason of the Imperial connections.

There was no threat from Japan to our shores. We had no rubber, no coal, no oil, no tin, no spices, no softwood, the gold was spent. We had no industry, no numerous workforce. There was Broken Hill and Whyalla's Iron Knob, of course, but not much else. We had only the sands and rocks of the desert all over and a drought-prone strip on the east. Why should Japan press beyond Asia to our north?

We know now that Japan had never intended to invade us. The concern of Japan was to put a ring around their Co-Prosperity Sphere to our north, to drive out and to keep out the British, the French, the Dutch and the Americans. The United Kingdom had no intention of defending us from them if they invaded. Our wool was of no great account to Britain. Enough was available close at hand in South Africa, the United States and the Argentine. Britain wanted our few soldiers to go to Burma to defend India, the jewel in the Crown.

We were sent a special royal instrument from the Palace directed to our Governor-General to make good the constitutional deficiency for the occasion and upon the faith of which our Ministers advised that we declare war upon Japan, putting to one side the domestic constitutional limitation and despite the plain strategic considerations advanced in opposition to that course

by some in our midst. A few were saying we should put Australia first. They took the name of their cause from that phrase.

We demonised the distinguished scholar, publisher and writer, 'Inky' Stephenson, together with his few adherents, for merely making the counter-argument. We seized them and kept them in gaol for over three years, without charge or trial.

It so happens that Stephenson may have been right to call for negotiation with Japan but war-time is no occasion to exercise freedom of speech. It is better to plunge on regardless. It is only lives and treasure that are at stake.

The defence power has not been enlarged since those days. Nothing since that time has changed, beyond that the Australia Act of 1985 prevents us now from going to London for permission to undertake a war of aggression.

The same man, John Howard, has given us David Hicks, and Mohamed Haneef, Mamdouh Habib, and Izhar Ul-Haque in pursuit of the so-called "national security" laws. These laws repudiate five hundred years of fundamental precepts developed by our criminal laws – laws which have dealt perfectly well with all acts of criminal violence in the community to this day.

He gave us Commissioner Keelty who is now in full flight as a political policeman. The provisions in the Crimes Act against subversion and sedition I reject, but they are emblems of liberalism compared with what Howard gave us and that Keelty and ASIO now run with.

What Howard gave us are not laws. They are licences for no-law.

I remember that we published in the early sixties in the CCL a pamphlet, drafted by the lawyers of the CCL, on the law of arrest and detention, questioning and charge, entitled "If You Are Arrested". In those days the police were on a roll.

On not a few occasions when the police were bringing cases arising from Vietnam and conscription protests, about indecent and obscene publications, for sit-downs in the forests, for the BLF. urban planning and green bans, for possession of pot and language in a public place, prosecutors mentioned to the court that a copy of a print entitled "If You Are Arrested" was found on the person of the defendant. For what prejudice was induced, one can only guess. There are no statistics.

This new publication before us has a far larger purpose: it traverses a wide range of matters that had become critical to liberty of expression and civic right in NSW.

I shall not go to them now for fear of the bell, I shall have to leave it be, but I think we will all be much better instructed by the reading. This work speaks for

itself. It stands alone in our lexicon, or alongside a life of Brian Fitzpatrick of earlier days.

The task, now – at this moment - is to ask you to help to move this work from the hands of our much loved and long admired friends, that duo in decency, Dot and Scott Campbell. With this book, they have done their part, indelibly, and not for the first time.

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Civil Liberties Watch

By Dale Mills

Mick Keelty

A proposal by Australian Federal Police Commissioner, Mick Keelty, to have the media banned from covering terrorism trials till they are over has received a negative response from everyone. Even the police union - the Australian Federal Police Association - distanced itself from Keelty's grab for more power.¹

In his own words, Keelty believes that "I am not saying that...public institutions be immune from public accountability in the discharge of their public service. But I am saying that a public discussion about them should be delayed...until the full gamut of judicial proceedings has been completely exhausted."² Of course - with appeals included - that could mean an effective media ban for years.

What marks Keelty's comment as extreme is his isolation in supporting such measures, as well as overlooking the fact that informal systems exist already for police and intelligence authorities to alert the media as to the inadvertent publication of sensitive details surrounding terrorism cases.³

Keelty's scheme would have prevented any of the media coverage of the Dr Haneef affair, the exposure of which led to the testing of the "evidence" against him, and ultimately the withdrawal of proceedings. But not only Haneef: criticism by the bucket-load has surrounded the actions of the AFP and ASIO when they initiated action against Izhar Ul-Haq,⁴ Zak Millah,⁵ Willy Brigitte,⁶ Jack Thomas⁷ and Scott Parkin.⁸ In Ul-Haque's case, the finding by Justice Michael Adams that on the basis of the evidence before him the ASIO officers had committed the offence of kidnapping at common law was referred (in my opinion, disgracefully) to the NSW Judicial Commission. This complaint against the judge for making a legal finding according

to the evidence - what judges are paid to do - was rightly dismissed by the Judicial Commission.⁹

Both the federal government and Opposition have distanced themselves from Keelty's suggestion. Keelty has also made statements in support of his position which - how does one put this - do not coincide with a common understanding of material reality. For example, Keelty is reported as saying that "In the United Kingdom, to prove a contrast with Australia, contempt of courts law prevents journalists from reporting proceedings in open court."¹⁰ Oh, come on. This is utter nonsense.

AFP and ASIO criticism has reached such a crescendo that former intelligence officer Warren Read has said that "The public is turning away from the agencies like ASIO and the AFP, saying they are a joke."¹¹ Rather than taking this criticism on board, Keelty wants to shoot the messenger.

An editorial in *The Australian* called on Keelty to consider his position while the campaigning group SpeakOut protested outside the Australian Federal Police headquarters in Canberra asking for his dismissal.¹² A spokesperson said "Commissioner Keelty was the point man executing the rollback of civil liberties [under Howard] in this land and his leadership has created an institutional arrogance within the AFP and a contempt for the rule of law."¹³

We will see how long Keelty can last.

Violence on Oxford Street

There are few rights as basic as being able to walk down a street, yet that has been challenged by a sharp increase in reported homophobic violence on Sydney's Oxford Street, a traditionally gay area of Sydney. The perceived lack of response to the violence by NSW police has become a gay cause celebre, with the gay press giving it extensive coverage - in one case increasing the size of its letters pages in order to print readers' letters.¹⁴ It has also received significant coverage in the local "straight" press.¹⁵

¹ *Keelty's cops snub terror call* by Sian Powell *The Australian* 4 February 2008.

² *Keelty rebuked after call to limit scrutiny* by Jonathan Pearlman and Connie Levett *Sydney Morning Herald* 1 February 2008.

³ *Police information* leading article *The Australian* 1 February 2008.

⁴ Judicial finding that ASIO officers kidnapped victim. *Scheming ASIO officers kidnapped suspect: judge* by Tom Allard *Sydney Morning Herald* 13 November 2007 and *Lesson learnt, says ASIO chief* by Jonathan Pearlman *Sydney Morning Herald* 6 December 2007.

⁵ Evidence collected illegally.

⁶ Intelligence information from France requesting immediate surveillance not acted upon as it was a long weekend in Australia.

⁷ AFP interviews ruled inadmissible.

⁸ Deported on ASIO's initiative - with a court case still winding its way through the courts.

⁹ *Judicial body rejects call to discipline judge* by Gerard Noonan *Sydney Morning Herald* 15 January 2008.

¹⁰ Speech by Mick Keelty on 29 January 2008. Reported in *Look out, reptiles, here come Keelty's size 12s* by Richard Ackland *Sydney Morning Herald* 1 February 2008. Emphasis added.

¹¹ *Spying on the spies* by Natalie O'Brien *The Australian* 14 November 2007.

¹² *Ruling Strands Keelty: the AFP Commissioner should consider his position*, leading article in *The Australian* 2 March 2008.

¹³ *Federal police chief Keelty urged to go by* staff reporter yahoo.nz.news 15 February 2008.

¹⁴ For example, *Sydney Star Observer*, 24 January 2008.

¹⁵ *Police defensive* in Central 30 Jan 2008.

Perhaps this lack of response is explained by the extreme homophobia in NSW police. Dallas McCarthy, from a police family, resigned from the force after homophobic bullying. In his case, the bullying involved animal tissue, dried blood and the messages "poofa boy" and "fag dog" found in his pigeonhole. Comments were made that Gay and Lesbian Liaison Officers - the police officers who liaise with the gay community - were "rock spiders" (child sex abusers).¹⁶ Evidencing a systemic problem rather than one or two bad apples, his complaints were not followed up by senior police.

Given the energy of gay activism, there has been a broad response. Groups which have been set up include the Police Integrity Group, GenQ Street Angels as well as an Oxford Street safe space.¹⁷ Following an intervention by the Police Minister, David Campbell, the local police station (Surry Hills) is being investigated by the Professional Standards Unit (itself part of NSW Police).¹⁸ Police have denied that they are homophobic.¹⁹

A rally on the issue next door to Surry Hills police station on Australia Day drew nearly a thousand people. The police kept a respectful distance.

Tasers and pepper spray

New demands have been made for NSW police to receive Taser guns, an object of violence that the NSW Police Association has been campaigning for over a long period. Police Minister, David Campbell, has had a trip to the United States to see the weapon in action. Tasers are hand-held guns which shoot two metal probes which deliver a 50,000 volt electrical shock. They typically result in the victim falling to the ground, urinating themselves and the paralysis of major muscle groups. Apart from death, the main injuries occur when the person hits the ground, falls down steps or collides with sharp objects. The Police Association wants them extended to all general duties police. Amnesty International has produced evidence linking the Taser to over 150 deaths in the United States.²⁰ Videos of their abuse are a high-ranking item on the video channel Youtube.²¹

An obvious criticism of the proposed introduction of Tasers is that what is perceived as the current abuse of pepper spray augurs poorly for the responsible use of Tasers. It is difficult to provide information on the alleged trigger-happy propensity of the police with the use of pepper spray, as the police refuse to provide

this information to the public.²² There is no readily available public information as to how often the police use their capsicum spray, leading to media attention and anecdote when it comes to the abuse of the spray. *The Daily Telegraph* has showed a number of photos of police officers using capsicum spray on footballers Wayne Carey and Ben Roberts, as well as bystanders at the Australian Open tennis. At the Australian Open, film was broadcast of a police officer "aiming the spray at the face of Greek fans from a safe distance and then retreating quickly up the stairs [which raised] eyebrows when they were beamed around the world."²³ Calls for the police to simply say sorry have been met with the usual police response - to stay silent or to assure everyone that everything is fine, rather than owning up to the possibility that people doing jobs sometimes make mistakes.²⁴

The President of NSW CCL, Cameron Murphy, said that capsicum spray "was said to be a last alternative to lethal force, but the reality is quite different. There is an increasing tendency to use it as a first resort when other alternatives are available."²⁵

Meanwhile, Tasers are now available in the United States for individual use in a range of colours which the manufactures say are attractive to women (red, pink and leopard skin). They also come with a built-in MP3 player with a 500-song storage facility.²⁶

Sorry, Mr Habib

One apology of note since the last edition of the Journal was that given to Mamdouh Habib by NSW Police after one of their officers called him and his wife "terrorists".

The former Guantanamo Bay detainee, who has not been convicted of any terrorist offences, was shouted at by Constable Lucy Edes in a street outside Bankstown Local Court. Mr Habib took a photo of a car after he noticed it was following him. It turned out to be a police car, and one of the officers in the car asked for the film. When Habib refused to turn it over, she shouted that he was a terrorist - in front of his lawyer. Mr Habib was at the court after he had been charged with offensive language by police. Mr Habib

¹⁶ *Officer quit police force 'because of homophobia'* by Harley Dennett *Sydney Star Observer* 17 January 2008.

¹⁷ *Push for integrity and work together* by staff reporters *Sydney Star Observer* 17 January 2008.

¹⁸ *Police minister intervenes* by Harley Dennett and Cara Davis *Sydney Star Observer* 17 January 2007.

¹⁹ *'We're not homophobic': police respond to media allegations over handling of gay attacks* by Katrina Fox *Sydney Star Observer* 24 January 2008.

²⁰ *Is that a gun in your pocket or do you just like the music* by Jordan Baker *Sydney Morning Herald* 10 January 2008.

²¹ Go to www.youtube.com and search under "taser".

²² Nothing on the NSW police website and a telephone call by the author to NSW police on 15 February 2008 was met with the response that the police refuse to give out such information but I was at liberty to adopt the Freedom of Information process if I so wished. Prior experience indicates that such a procedure is time-consuming, expensive, and may be met with the response that the information is not collected.

²³ *Copping a spray* by Tony Vermeer *Daily Telegraph* 10 February 2008. Also see front-page coverage in Melbourne *Police mace Greeks* by Chris Johnston *The Age* 16 January 2008. Also *Police slammed over capsicum spray at tennis* by Chip Le Grand *The Australian* 16 January 2008.

²⁴ *A mistake and police should say sorry*, opinion piece by Julian Burnside, President of Liberty Victoria, in *The Age* 19 January 2008.

²⁵ Quoted in *Copping a spray* by Tony Vermeer *Daily Telegraph* 10 February 2008.

²⁶ *Is that a gun in your pocket or do you just like the music* by Jordan Baker *Sydney Morning Herald* 10 January 2008.

has claimed in the past that he is being targeted for special attention.²⁷

Although receiving an apology from police - and with Constable Ede being "counselled" - no apology has been received for his time in Guantanamo Bay. However, this may become more likely now that an ASIO employee has undermined claims of the Howard government that it didn't know anything about Habib's extraordinary rendition to Egypt. Since the time that Habib was detained, it was discussed with government officials in October 2001 that he might be sent to Egypt.

Mr Habib is currently suing the Australian government saying Australia was complicit in what he refers to as his being kidnapped by US intelligence officials, detention at Guantanamo Bay and his torture by Egyptian intelligence. Habib says that the Australian government owed him a duty of care to protect him from torture and other human rights abuses, while the Australia government denies such a duty. The matter is still before the courts.²⁸

...and finally

How ironic - at the same time that the new Labor Prime Minister Kevin Rudd has apologised to the stolen generations - Aboriginal deaths in custody have continued to rise since it was first investigated by the Royal Commission into the issue. The number of deaths in custody during the Royal Commission (1990) was 10, where in 2006 it was 13. Rather than a statistical blip, the increase has been long-term. Non-indigenous deaths in custody have increased even further, with 39 deaths in 1990 and 55 deaths in 2006.²⁹

²⁷ *Police apology on Habib insult* by Natalie O'Brien *The Australian* 8 February 2008.

²⁸ *Spy warned of Habib torture* by Natalie O'Brien *The Weekend Australian* 2-3 February 2008.

²⁹ *Deaths in custody on the rise* by Siobhain Ryan *The Australian* 8 February 2008 and *2008 Yearbook Australia*, Australian Bureau of Statistics, at <http://www.abs.gov.au/>

Notes from the Frontline

with Dr Michael Kennedy

'The Green Light'

Many of you may recall that in the 1980s and early 1990s the media referred to the relationship between ex NSW Police Detective Sergeant Roger Rogerson and Neddy Smith as 'The Green Light'. Of course this was taken up during the Wood Royal Commission and subsequently has been used as a metaphor for corrupt police giving certain individuals the approval to conduct criminal activity. It is an interesting but lazy and titillating sound bite, which oversimplifies the complex relationships between the police and the policed in the search for deviant activity.

The very concept of 'The Green Light' has two extremes. One end of the continuum is verbal approval and the other extreme is silence. For example police can give verbal approval and actually assist in the carrying out of drug importation or the commission of an armed robbery or murder. At the other end of the continuum police can pretend they know nothing about criminal activities involving their colleagues and criminals and as such conveniently close their eyes to all events.

Over the years the word 'whistle blowing' arises from time to time and it is bandied about by politicians, organisations with oversight of the police and the media as some type of successful remedy to police misconduct. I cannot think of a single incident where a 'whistleblower' has been better off as a result of blowing the whistle on their colleagues. Ironically I cannot recall the last time a politician blew the whistle on a colleague in an opposition party let alone their own and the same applies to pools of journalists who advocate 'whistle blowing' as an obligation of all police. As for many of the senior police who advocate 'whistle blowing', it seems the louder they are, the less likely it is they have ever put their money where their mouth is.

It is useful to know that when shaping a common public enemy the political arm of the state and the media use the same strategy of approval and silence combined with a mixture of coercion and consent. For example, the public are told Dr Haneef has certain things in his possession and the same public are presented with vague or edited facts as to how this incident occurred. When evidence to the contrary is available, there is simply silence implying that there is nothing else other than the original version published. Many within the media would have been aware of this because leaks from the AFP and the Federal political arena are prolific. Yet there was absolute silence until Haneef's lawyers raised the alarm about the AFP investigative strategies. Then the same media went into 'moral high ground' overdrive pretending they had

no idea this AFP strategy had been used over and over again. In recent years we have seen this investigative strategy used regularly by commissions of inquiry. In order to adapt to the mixed system of inquisitorial and adversarial law that governs the proceedings, it seems the flaw lies in the adversarial nature of examining witnesses. Over and over again in the Wood Royal Commission and the Building Industry Royal Commission it was difficult not to come to the conclusion that the purpose of questioning was to discredit what is being said rather than attempting to establish where the truth lies. In fact at times it became obvious that there was no attempt to establish a fact objectively. Rather the purpose seemed to be to destroy any confidence in the witness and their evidence.

The interesting concepts that arise from the media and marketing publicly associated with these events is that it is almost inevitable the public spotlight is shifted away from other failings of government, administrative elites and various agencies. But more importantly this strategy enables the criminal justice establishment to maintain the status quo.

For the media, which is mostly from the private sector, the ethics of this type of behaviour are questionable to say the least. But all too often the actions are quite lawful. The usual response when challenging the cultural elite 'chattering class' about this activity is a polemic regarding 'freedom of the press' or 'freedom of speech'. This war cry is generally forced upon the public through a daily dosage of electronic and print media. But writing and publishing whatever one felt like was not the sort of freedom that Benjamin Franklin alluded to in his version of press freedom. The original version was about presenting both sides of the argument and allowing the public to make up their own mind. This more popular adversarial approach should come as no surprise in an era when many journalists are credentialed with an Arts-Law degree. It is almost too easy to recognise the Arts-Law journalist at work; language always creates reality and interviews are about cross examination and not a search for the truth. Does this sound familiar?

What this aggressive and adversarial investigative strategy by government inquiries, police and the media does, is to make all the more interesting the recent attacks by some in the media on AFP Commissioner Mick Keelty. You see, the bulk of criticism directed at the AFP and Keelty arose from the anti-media sentiment expressed in a speech delivered at the Sydney Institute on 30 January 2008. Readers will note that few of the usual suspects who have Walkley

Awards on their mantelpiece for their 'journalistic excellence' re: policing institutions have actually contributed in the more recent media attack on the AFP. It is no secret that over the years many of these 'progressive' commentators have relied on the AFP hierarchy for story material. Commissioner Keelty and his advisor-companion-body guard Agent Courtney Christie have both or individually been observed over the years in the company of journalists. I am told that AFP corporate credit cards have been used to pay for meals and refreshments, which of course means the public purse is paying. This in itself is interesting considering rank and file AFP are discouraged from accepting half price McDonalds because this is considered to be the 'slippery slope' to corruption.

But where this whole issue begins to gain momentum is not in the attacks made on Keelty and his organisation by a few Australian journalists and politicians. Rather, it is about the silence of so many others. Particularly those who have publicly advocated the various 'cultures of corruption' could be eliminated if there were more whistleblowers. This is contradictory behaviour at its worst by a group of individuals who demand accountability of the criminal justice system's low-levelled functionaries, yet display not an ounce of conscience regarding their own hypocrisy and lack of accountability.

Hardly a word by the political arm of the state or the media regarding the appointment by AFP Commissioner of ex-Chief Justice Sir Lawrence Street and ex-NSW Police Commissioner Ken Moroney on an internal inquiry into the relationship between the AFP and the Australian Intelligence Agencies. I doubt the incident from the late 1980s involving senior AFP officers and ASIS regarding heroin importations from Lebanon that involved individuals from the Australian Consulate in Damascus will ever be discussed. The fact that Ken Moroney appears to have no understanding of what civil liberties mean was evidenced in his statement to the *Sydney Morning Herald* 23 June 2007 'Moroney's Big Brother laws' ...Mr Moroney said. 'Let me say this, every police officer ... [has] to be concerned about the civil liberties of everybody - not just a small few. We have to be concerned about the civil liberty of being able to leave your car on the street without it being stolen. I've got to be concerned about the civil liberty of not having your house broken into when you leave it. I've got to be concerned about the ultimate civil liberty of being able to go about your business ... without being assaulted, or the ultimate breach of civil liberties...murder. And so I dismiss these issues.'

Of course one only is entitled to ask just how Sir Lawrence Street's memory is these days. In 1997 Sir Lawrence was giving evidence to Commissioner James Wood at the NSW Police Corruption Inquiry regarding Justice Yeldham. He admitted he may have suffered 'a defect in my memory' when he appeared before the NSW Police Royal Commission and said he

had told nobody he had confronted Justice David Yeldham about his rumoured sexual conduct. So it appears that 'whistle blowing' is not practised at this level of the criminal justice system.

In the *Sydney Morning Herald* on the 18 February 1997 'Sir Laurence admits 'memory defect' on Yeldham' it was reported ... But a Mr Walker told *Four Corners* he had also heard information about Justice Yeldham and directed that it be brought to the attention of Sir Laurence, then the NSW Chief Justice. Sir Laurence, who has previously said he received his information about Justice Yeldham's rumoured activities from a former NSW police officer, told the program he might have instead got the information from Mr Walker. 'If he (Mr Walker) has a recollection of it, I wouldn't quarrel with that,' he said.

Sir Laurence said he would not accept he had given incomplete evidence to the royal commission but said there may have been a defect in his memory.

Sir Laurence told the *Herald* last night that the program's implication that his evidence was incomplete did not 'disturb' him. 'The human memory has its frailties when talking of events many years ago, but obviously whoever conveyed the rumour to me was somebody at the time I spoke to,' he said.

Yet some 11 years on Sir Lawrence appears to be competent enough to chair an inquiry on behalf of AFP Commissioner Mick Keelty.

Let us hope that Ken Moroney and Sir Lawrence Street are savvy enough to ask: 'Who is AFP Agent Courtney Christie?' and 'Why in late 2007, about the time this inquiry was being structured, was she quickly dispatched to Washington as the FBI liaison officer?' and 'Was this agent chosen for this job on merit?' And 'What does this agent know about the mainstream police work which involves a relationship with Australian policing institutions and the FBI?' More importantly 'What does Agent Christie know about Commissioner Keelty's relationship with the Australian Intelligence agencies and the Australian media?'

But little of this whole saga will ever be published in the mainstream media for public consumption. Or will it be raised for the public to hear in either State or Federal Parliament? So the next time you hear the word 'Green Light' being used by politicians or journalists with regard to police misconduct ask yourself this. 'Who gave the Green Light to the Australian Federal Police?'

Then search for a recent 'moral panic' that was designed to get the spotlight away from this issue. Such as the ongoing conflict between Victorian Police Commissioner Nixon and the Victorian Police Association. As with all moral panics there is a strong strand of truth in the detail. However the whole idea is to shift public attention by creating a common enemy, in this instance Victoria Police. Of course the word hegemony can also be applied to this situation.

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Book Reviews

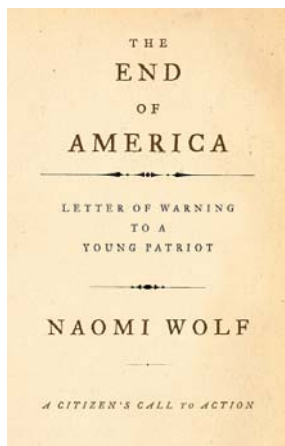
'The End of America: letter of warning to a young patriot'

by Naomi Wolf

Scribe Publications, 2007

Review by Ian Edwards

Naomi Wolf is best known as the author of *The Beauty Myth* and other feminist works, but this book shows that she is also deeply concerned about the decline of civil liberties in the USA, especially since the events of September 11, 2001.



She detects a 'fascist shift' in American politics under the Bush administration and draws parallels between what is happening there and what happened in Italy under Mussolini, Russia under Stalin, Germany under Hitler and Chile under Pinochet with some references to other totalitarian regimes such as China. To those, both in the USA and elsewhere, who are sure that it couldn't happen here she points out that '...both Italian

and German fascisms came to power legally and incrementally in functioning democracies'.

In her introduction she enumerates the ten steps that constitute the shift to fascism. They are: invoke an external and internal threat; establish secret prisons; develop a paramilitary force; surveil ordinary citizens; infiltrate citizen's groups; arbitrarily detain and release citizens; target key individuals; restrict the press; cast criticism as 'espionage' and dissent as 'treason' and finally, subvert the rule of law.

Like Al Gore she is familiar with the history of European settlement in North America and the determination of the founders of the republic to give the country a constitution which would ensure that it would never again be subject to the arbitrary whims of a tyrant. She is horrified by the consequences of the USA Patriot Act of 2001, the rendition of al-Qaeda suspects, the torture of prisoners at Abu Ghraib and Guantanamo Bay and the intimidation of potential critics who are afraid to speak out, not because they know that they are being watched but because they are afraid that they might be.

The increase, by legislation, in the already considerable powers of the president would still be there to be used by any future president, whether

Republican or Democrat and, as Lord Acton has reminded us, all power tends to corrupt.

So, what is the relevance of this to the Commonwealth of Australia? Clive Hamilton has shown us how far the process of silencing dissent has gone in Australia and there have been numerous instances of incarceration and abuse of refugees and asylum seekers (our external and internal threat) and infiltration of dissident groups by ASIO agents. The recent change of our federal government may provide some slowing of the 'fascist shift' but such is the power of American economic and cultural imperialism that it seems inevitable that whatever happens in the USA will also happen in Australia. It would be a mistake to be fatalistic about this. Naomi Wolf's book is a reminder that the price of liberty is eternal vigilance and should help us to be aware of the threat to our liberties and to hold on to those which we still have.

The End of America: letter of warning to a young patriot

By Naomi Wolf

Scribe Publications, 192pp, RRP \$24.95

Released: Oct 2007

ISBN/Catalogue Number: 9781921215841

'Yearning to Breathe Free: Seeking Asylum in Australia'

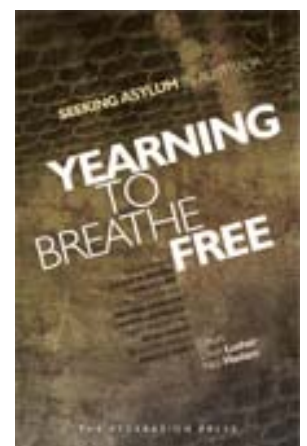
Editors: Dean Lusher and Nick Haslam

The Federation Press, 2007

Review by Ian Edwards

The title of this book is a quotation from a sonnet by a New York poet, Emma Lazarus, which is inscribed on the base of the Statue of Liberty. How far the treatment of migrants to the USA has lived up to the sentiments expressed in the poem is questionable but what we have to answer for is the treatment of refugees who have sought asylum in Australia.

Let us begin by frankly admitting that we are all inherently racist. The fact that Australia has been a multicultural country since the arrival of the first fleet should not blind us to the obvious fact that we are still predominantly a people descended from English speaking citizens of the British Isles and that we have never been inclined to welcome people from other countries who spoke other



languages and professed religions other than Christianity.

One of the first pieces of legislation passed by the federal parliament in 1901 was the Immigration Restriction Act, which remained in force until the 1958 Migration Act abolished the notoriously unfair dictation test and other discriminatory clauses. That playing the race card could still be effective as late as 2001 was demonstrated by the response to John Howard's election campaign statement in the wake of the Tampa incident: "We will decide who comes to this country and the circumstances in which they come." As Julian Burnside writes, in this book's last chapter, this is a reasonable description of our immigration policy but not of the way we should treat asylum seekers. Although the Immigration Department is primarily responsible, the decision to grant asylum clearly implies that to send refugees back to their home country would be to expose them to discrimination. In cases such as West Irianese asylum seekers it is therefore necessary to take into account the likely response of the Indonesian government.

The book is divided into six parts, each with an introduction by someone with expertise in the subject. Thus part 1, Historical perspectives and background is introduced by Stuart Macintyre; part 2, Coming to Australia by Lyn Allison; 3, Treatment of arrived asylum seekers, Malcolm Fraser; 4, Resettlement in Australia, Sir Gustav Nossal; 5, Public opinion about asylum seekers, Phillip Adams and 6, The future of asylum seeker policies, is introduced by Lindsay Tanner.

No doubt the immigration policies of our present federal government will be more humane with regard to the 'Pacific solution' and the incarceration of refugees but it is early days yet and we will need to ensure that there is no return to the disgraceful treatment of people who are only seeking the kind of democratic freedoms which we claim to be fighting for in Afghanistan and Iraq.

This book contains everything you need to know about the reception of refugees by the Australian people and their governments. It is well worth the price.

*Yearning to Breathe Free
Seeking Asylum in Australia
The Federation Press, 304 pp RRP: \$39.95
Released Oct 2007
ISBN (13): 978186287656*

Editorial

The editorial department of 'Civil Liberty' has been questioned much in the last few months on how happy we must be at the result of the most recent federal election. In point of fact, the reaction has been one of weary relief. Finally the disconcerting feeling of evolution retreating in reverse gear has been double shuffled back into the right direction.

For some reason we feel compelled to reaffirm that this has nothing to do with politics or any deeply-ingrained notion of party preferences. It is a question of ethics pure and simple. From the Tampa affair onwards, the Howard government proved itself wholly unworthy to hold public office. To say that they were a national disgrace would not be an over-exaggeration.

So many policies – unapologetically and proudly expressed - were simply 'beyond the pale' and the subsequent elections of this bunch of freaks and geeks will surely be a source of national shame for years to come. It was like watching a murderer proudly revelling in his crime. This is not to gloat in victory but merely an expression of the relief that comes with the idea that perhaps Australia can actually move forward for the first time in years.

And will this be the case? Well, for now the signs are positive but there is still a long way to go before the country has parity to what it was over a decade ago. The treatment of refugees and asylum seekers is moving closer to that which Australia was used to in the days of the Vietnamese boat people. Reconciliation actually now seems a possibility and the rape of Iraq is publicly seen as such.

Importantly, there have been no overt signs of triumphalism from the new government and there appears a genuine effort to be inclusive when allowing the opposition to have a voice on social issues. Witness the *glasnost* apparent when Rudd initiated the apology to the 'stolen generation' in parliament. Many felt it was less than the opposition deserved after years of intransigence that continued right up until the apology's gestation.

So here's to hope and a future that will put the shame of recent years deeply into the past. It may even be deemed necessary to apologise to those who have been viciously wronged in these dark times. Let us hope that such an outcome is not so thwarted and does not take quite so long to implement - as any civilised society would so clearly have it.

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