

# FISHING

## TRUTH

Max Wallace

***Franz Kafka would not be surprised at the lingering saga of Mick Skrijel.***

The Federal Parliament's Joint Committee (PJC) on the National Crime Authority (NCA) advertised nationally on 24 February 1997 for submissions about its evaluation of the operations of the NCA.

Press reports in February (for example, *Sun-Herald*, 23 February 1997) noted a secret report (the Harrison report) into the Australian Federal Police (AFP) will be given to the Attorney-General shortly which will apparently disclose corruption on the part of AFP officers involved in drug law enforcement.

At the end of 1996 the Australian Law Reform Commission (ALRC) issued its report 'Integrity: But Not by Trust Alone' dealing with AFP and NCA complaints and disciplinary mechanisms. The ALRC recommended the creation of a new agency to investigate and manage complaints against the AFP and NCA.

The PJC is fully aware of a case that both makes a mockery of the Australian justice system and stands as a case study of why the new agency is needed.

### Some background

The story began in 1978 and according to the then Senator Peter Baume, in a speech to the senate on 21 May 1990, the tale was as follows:

Mr Skrijel alleges, first, that he witnessed a fellow fisherman in South Australia picking up drugs which had been dropped at sea off a passing ship. Mr Skrijel saw them picked up and put on a fishing boat which then landed at Southend, the port from which it was operating. He was informed by his deckhand, who knew what was going on, that the package contained heroin. We understand that there was a distribution network extending from Southend to Adelaide. We understand that there was an organised drug importing operation, operating from Southend in which drugs were picked up by fishermen. The first allegation is that when Mr Skrijel made this known to the appropriate authorities nothing was done about it.

The trauma the Skrijel family has experienced is on a par with the Chamberlain case; the stonewalling they have experienced recalls the similar fact experiences of the Milgates as outlined in Brian Milgate's *The Cochin Connection*;<sup>1</sup> the injustice involved has echoes of Timothy Anderson's experiences.

In his Senate speech, Senator Baume also referred to the then Premier of South Australia, Mr Corcoran's 1980 direction that Skrijel's allegations be investigated by South Australian police. One of the investigating officers was Detective Sergeant Barry Moise who was subsequently gaoled in 1987 for his involvement in drug distribution while he was in charge of the anti-drug phone-in Operation Noah in 1986. He was gaoled for 27 years.<sup>2</sup>

The investigating officers' report which apparently reflected information provided by Moise was summarised in a letter of 11 February 1981 from the next Premier of South Australia, David Tonkin, to the then Prime Minister, Malcolm Fraser. In it, with what we can now see

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as biting irony, Mr Tonkin said that 'it was doubted Mr Skrijel was in possession of relevant information concerning drug trafficking of which the local police and the Drug Squad were not already aware' (emphasis added).

Skrijel has also alleged that his family was intimidated and suffered harassment, bashings, the sinking of his boat and the burning of one of his houses.

Skrijel also claims that he was framed by the NCA in order to shut him up. He was convicted in the County Court at Ballarat on 1 April 1987 and sentenced to two years gaol for cultivation of cannabis, an explosives offence and being in possession of an unlicensed pistol. He appealed against the conviction and his appeal was upheld after he had served five and a half months. The conviction was set aside and a retrial ordered by the Full Bench of the Supreme Court of Victoria on 6 May 1988. The Victorian DPP no-billed the case. As Senator Baume noted, this was 'a neat way of ensuring that there is no further court appearance on this matter in this case'.

An instructive letter to Senator Baume of 30 December 1985 written by the then head of the NCA, Mr Justice Stewart, before Skrijel's trial said:

The Authority recently completed its inquiries into Mr Skrijel's allegations. There were 22 such allegations, of which the Authority investigated 20. It found all of them to be without substance ... For your information, Mr Skrijel was arrested on 15 October 1985 and charged with various offences relating to drugs, firearms and explosives.

The final sentence of the letter mentioning the charges against Skrijel which were then not proven may well have had the effect of destroying Skrijel's credibility in Senator Baume's eyes before his trial. This was a curious approach from Justice Stewart who said in an interview with the *Age* (14 December 1984) just after taking up his position with the NCA: 'Our people are trained lawyers. They know what justice is. I was a member of the Council for Civil Liberties for many years.'

### The Government's response

In a reply to an article by Richard Ackland that appeared in the *Financial Review* on 24 November 1995, the then Minister for Justice, Duncan Kerr, in that newspaper on 5 December 1995 added another brick to the wall of denial that has characterised the Federal Government's response to the Mick Skrijel saga.

Kerr's letter demonstrated an unwillingness on the part of his Government to make the NCA accountable to Parliament, an issue that has subsequently surfaced in another context: the recent final report of the ALRC on complaints about the AFP and NCA.

The Ackland article 'Fisherman caught in a net of violence', was one of the few to have appeared in the media about Skrijel's case, outside the popular or provincial press. This is in itself remarkable as Skrijel's troubles began in 1978. Two statements about his case, including the extensive overview by Senator Baume, drew no cries of alarm from the media.

Kerr's unwillingness to call a royal commission into Skrijel's case flies in the face of advice received from a South Australian QC, David Quick, who was appointed by the then Federal Attorney-General and the then Minister for Justice. Ackland pointed out that Mr Quick's brief was to act as 'an independent consultant to advise the Attorney-General and the Minister for Justice on 'all aspects of the NCA's dealing with Mr Mehmed Skrijel and his family'.

Duncan Kerr's 1995 referral of the Skrijel case to the Victorian Deputy Ombudsman continues a pattern of mis-guided decisions. His decision appears to be based on the technicality that the officers who seem to be at the heart of Skrijel's complaints were seconded to the NCA from the Victorian police making this a State rather than a Federal matter. This is no more than a thimble and pea trick generated by legal positivism.

In his 1995 *Financial Review* article Ackland pointed out that Quick QC's:

findings and recommendations do not make pretty reading for our national crime-busting body. In fact, there was so much damning stuff about the NCA that a second volume of the report was presented confidentially to the ministers ... Although the Deputy Ombudsman can investigate the Victorian police, he has Buckley's chance of investigating the NCA.

Ackland's comments contrast markedly with two recent events concerning the NCA. The first is the ALRC's report which recommended the establishment of a National Integrity and Investigations Commission (NIIC) to 'investigate or supervise the investigation of complaints of corruption in relation to the AFP and the NCA'.

The earlier draft report of the ALRC was critically reviewed in the *Canberra Times* by Rod Campbell (26 July 1996). The article featured criticisms of the ALRC's Paper from the Ombudsman. Oddly, Campbell argued that 'the report does not suggest that corruption within the AFP and NCA is such that a national anti-corruption body is imperative'. But the whole thesis of the Draft Report was to argue the need for an NIIC with extensive powers. At p.21 the Report says:

The current ad hoc arrangements for complaints against the NCA is grossly deficient in that it lacks any publicly known or recognised process and any consistent external security. The system does little if anything to create public confidence in the accountability or integrity of the NCA.

Also, as if to respond to Campbell's 26 July assertion, on 5 August 1996 the Federal Government announced an inquiry into AFP corruption! The inquiry was to be headed by Sydney barrister, Ian Harrison.

The Draft Report also claimed that the ALRC 'has not received any advice from any organisation or an individual in an informed position to comment that the AFP or the NCA have problems with corruption and misconduct anything like that experienced elsewhere in Australia' (emphasis added).

### Scrutiny of the NCA and AFP

As far as the Draft Report was concerned it did not cut much ice to demonstrate outside Federal Parliament about alleged corruption in the NCA; have your case aired in the Parliament; be arrested by the NCA and serve a term in prison; on release have the conviction quashed after an appeal; have a QC appointed by the Federal Minister for Justice to investigate your claims and recommend a royal commission; and after the Minister refused a royal commission to go to Hobart during the Federal election campaign and hand out pamphlets in the Minister's electorate.

According to another article by Richard Ackland in the *Financial Review* (9 February 1996) a worker on Mr Kerr's campaign team warned an ABC announcer about interviewing Skrijel and the program was cancelled. An AFP officer then visited the announcer and she was:

asked about her impressions of Mr Skrijel and his reaction to being told the interview had been cancelled. The police officer also wanted to know Skrijel's whereabouts in Hobart, which she did not have. She was asked by the AFP officer to get in touch with the whistleblower organisation, ask them to contact Skrijel and invite him back to the studio on the pretence that another interview would be scheduled. It was suggested that she string Skrijel along and find out his address in Hobart, so that the copper could go and interview him about his pamphlet.

Why did these events occur? <sup>3</sup>

Why did the ALRC give no consideration to the view of the PJC on the NCA when it said that the PJC had 'received complaints from individuals about the NCA but the PJC commented that it lacked the time and resources to investigate the more complex complaints' (ALRC Draft Report, p.22)?

Is it quite satisfactory that allegations can be disregarded by the PJC because there is not enough time and resources to investigate them? Is it the role of the PJC to carry out investigations?

With respect to the Harrison inquiry one AFP officer, Alan Taciak, claimed he could name 78 corrupt Federal Police. Allegations were made by other former AFP officers in the *Canberra Times* of 7 August 1996, one of whom claimed that if the inquiry was 'upgraded to a royal commission ... people like me [alleging corruption] will come forward in droves'; and another, former chief inspector Ray Cooper, who in the same issue repeated similar allegations and described AFP Commissioner Mick Palmer as 'well intentioned but naive'.

As far as the current Attorney-General, Darryl Williams, was concerned most of Mr Taciak's allegations were 'based only on hearsay or conjecture'. Responding to a *Canberra Times* editorial arguing that Mr Harrison should have wider powers for his inquiry, Mr Williams initially played down the need for such an inquiry in much the same way his predecessor played down the need for a royal commission into Skrijel's case.<sup>4</sup>

Two months later, the current Attorney-General decided to broaden the terms of reference to 'review and report on associated practices and procedures used by the AFP which may be deficient or may have contributed to or facilitated the existence of corrupt practices'.<sup>5</sup>

But this still ignored the editorial's comment that leads from the Harrison inquiry 'will open up fresh trails' that would require more time, resources and power to pursue.

The *Canberra Times* published an instructive letter from Jennifer Saunders, a solicitor in the ACT Legal Aid Office, on 22 August 1996. She pointed out the Harrison inquiry is:

necessarily a secret inquiry — s.87 of the *Complaints (Australian Federal Police) Act* says that any inquiry carried out pursuant to the Act must be kept secret, although the Minister (in this case) or the Commissioner can allow part or all of the inquiry to be made public if it is in the interests of the AFP or other parties (including the public) to do so. They may well decide that it is not.

Confirming Ms Saunders' prediction, a *Sun-Herald* report of 23 February 1997 said Mr Harrison's report will argue that any corruption in the AFP is a thing of the past. Apparently there are no 'fresh trails' to pursue. The *Sun-Herald* concluded: 'A sanitised version of the Harrison report will be tabled in Federal Parliament but the full inquiry will remain suppressed'.

On 30 November 1995 Senator Calvert (Liberal, Tasmania) tabled a letter from Skrijel circulated to all Members of Parliament demolishing Duncan Kerr's decision to pass the issue of his case to the Victorian Deputy Ombudsman. If the

general thrust of this letter and Ackland's analysis of this issue are right, then the serious questions that could be asked of the NCA will not be asked.

In Rod Campbell's *Canberra Times* review of the ALRC's draft paper on the need for a corruption investigatory body overseeing the AFP and NCA, he independently arrives at the same conclusion as Ackland and Skrijel's letter tabled in Parliament that 'the Ombudsman's office is primarily a complaints-handling body, not a corruption fighter'.

### How should Skrijel's allegations be aired?

The need for a broad-ranging royal commission dealing with all these issues could be argued by confirmed allegations of corruption in the Victorian police (the *Age*, 16 January 1996); the experiences of the Victorian police whistleblower, Karl Konrad; the collapse of the NCA case against John Elliott where 'trained lawyers' managed to spend \$20 million of public money with the case being derailed because the NCA used its powers in a 'regrettably casual fashion' (ALRC Report, para. 5.68); Elliott's claims of political interference; the earlier resignation of a certain highly placed NCA officer; and the findings of the Wood Royal Commission in NSW which contrast with a 1992 NCA inquiry into whether Barry Moyses was alone in his drug distribution activities in SA. That inquiry found no evidence to support allegations that he was not alone. In the light of the Wood Royal Commission this seems counter-intuitive to say the least. Clearly the corruption phenomena unravelled in NSW occur on a similar scale elsewhere and deserve the same sort of inquiry that the NSW Government is undertaking.

The longer successive federal governments decline to confront these issues and call for one-off inquiries that lack true inquisitive powers, the longer we will have more of the same. What it seems to come down to is: you either have something approximating the rule of law in all sections of Australia's law enforcement agencies or you don't.

In its final report, the ALRC devoted six paragraphs to the Skrijel matter [paras 5.39-5.44] and concluded in para 5.44:

If the Commission's proposed NIIC had then been operating there would have been no need to engage Mr Quick to conduct an inquiry or then to arrange for the Victorian Deputy Ombudsman to investigate any matters. The NIIC would have investigated from the outset with the full range of powers available to it that Mr Quick did not have.

As matters stand in the Skrijel case, the report of the Victorian Deputy Ombudsman was due some time towards the end of 1996. Inevitably it is late. If form is anything to go by, it will not deal with the hard questions. One wonders how it could be otherwise when 'the office has only 13 staff handling a vast range of complaints — nowhere near the investigative resources the Quick report said would be required'.<sup>6</sup>

Some of the hard questions were outlined by Senator Baume in his 1990 speech to the Parliament:

- why were Skrijel's allegations of maritime and other drug smuggling never followed up?
- what were the circumstances surrounding the sinking of Skrijel's boat and the burning of his home?
- the NCA has consistently denied Skrijel's allegations have any foundation, yet Skrijel alleges they hold six tapes supplied in good faith that contain vital information which have never been returned to him: why?
- what were the allegations that Justice Stewart referred to that Skrijel had made and why were they all refuted by the NCA?

- what of Ackland's claim that 'there was so much damning stuff about the NCA [in the Quick report] that a second report was presented confidentially to the ministers'?
- subsequent to his conviction being set aside, Skrijel's wife's car was mysteriously destroyed by fire in Melbourne, his house was broken into on 3 November 1995, and a bullet was left by his fax: will the Deputy Ombudsman investigate this?

The ALRC recommendation for a National Integrity and Investigations Committee to oversight the AFP and NCA is very supportable provided it receives adequate funding. Unfortunately for the Skrijel family it will be a decade late when and if it happens. The ultimate indignity for the Skrijel family would be a recommendation of millions of dollars compensation for John Elliott by the internal departmental inquiry called by the Minister while they continue to get nothing following the inquiries into their case. The contrasting speed with which the Minister called the internal inquiry would seem to indicate that there is every likelihood of this happening.

It is likely that the internal inquiry will, with dignified hyperbole, express its distress at what happened to Mr Elliott and solemnly recommend millions of dollars compensation. There is no doubt Mr Elliott has been to purgatory but he has not been to hell — and gaol — like Skrijel. Meanwhile the Skrijel family will be left to languish as instructive examples to other citizens who may be tempted to take the law at face value that outcomes are a function of considerations other than legal ones.

As the ALRC observed with some understatement about the Skrijel case in its final report at para 5.43:

This case continues to attract media attention and the media coverage suggests that it continues to cast some doubt within the community about the integrity of the NCA.

## Conclusion

A final qualification concerning the establishment of the NIIC is that it could be used by governments as a sponge to absorb allegations of NCA/AFP corruption to leave its political masters free of responsibility when a matter arises.

This is covered to some extent by the ALRC Final Report's suggested 'staggered exits' for staff (ALRC Report para 6.24). Submissions that no staff from the AFP, NCA or Ombudsman's Office be contracted are sound.

One could imagine a politician saying to a dissatisfied Skrijel 'look, the NIIC has looked at your matter and found no cause for concern. Nothing more can be done.'

The recommendation in the Final Report that 'The NIIC should be required to report to the Attorney-General any complaint of misconduct against it or its officers' falls down when a complainant also complains against the Attorney-General, as was the case, as we have seen, with Skrijel.

A better course of action would seem to be a report to the Prime Minister as he is not in any way involved in the day to day activities of these agencies. It would undermine the credibility of the NIIC from the start if its role could be characterised as one of 'Pontius Pilate'. The Parliament should naturally be the place to report such matters but the ALRC Report notes how the PJC expressed the view that it wanted no role in supervising the NIIC (para 6.80). Given this, the Prime Minister seems the only destination for such a report.

In 1985 Roger Lewis noted:

It is interesting that a downturn in the world economy has coincided with increasing heroin consumption on a global scale. It

will be even more interesting to see if heroin use peaks, stabilizes or declines if there is an economic upswing in the 1990s.<sup>7</sup>

On 14 October 1996, Attorney-General Williams proudly announced to Parliament that the AFP, the NCA, Australian Customs and Victorian Police had just seized 23.7 kilograms of high grade heroin imported in wooden wall hangings which arrived in two crates by air from Thailand. A sum of \$870,000 had also been seized.

It would appear that heroin use has not peaked, stabilized or declined. It would seem that there is so much of the stuff around that criminal groups are prepared to be quite brazen in their attempts to smuggle it into the country.

That is what Skrijel was drawing to our attention. One could form the view that the reason there will be no royal commission into his allegations is that the Government knows full well the immense scale of heroin and other drug importation; realises that a royal commission could open up a Pandora's box of other allegations from other Skrijels; these allegations in turn would put demands on already under-resourced investigatory bodies whose own honesty has been questioned; there would need to be an infinite regress of inquiries.

It follows that cases like Skrijel's have to be hosed down. The scale of the problem has to be particularised because it is intractable. Decriminalisation of drugs is unthinkable in the absence of a similar move from the United States, I would argue. Even the modest suggestion of a 'heroin trial' in the ACT, where addicts would be treated as people with a medical problem and given small controlled doses, was too much.

The likely conclusion is that governments and their relevant agencies are engaged in casuistry to conceal what presents as an intractable social problem which is at the same time a political problem that does not generate sufficient votes and which has diplomatic dimensions. It does not follow that politicians are 'corrupt' when they back away from allegations such as Skrijel's. They are overwhelmed. They are faced with a problem that defies their collective expertise and demands the sort of time and attention they do not have.

But doing next to nothing leaves police and agency corruption free to grow. Like it or not, this is the issue they have to deal with.

## References

1. Milgate, Brian, *The Cochin Connection*, Chatto & Windus, London, 1987.
2. *The Australian*, 24 August 1988.
3. In another context the former Minister for Justice, Mr Kerr, has said: 'Attorneys-General and Ministers for Justice do not have power to give directions with respect to police investigations. Might I say that confidence in the administration of justice requires that judgments with respect to decisions to prosecute in a particular case and specific police inquiries not be subject to political instructions, the more so when matters have obvious political significance.' *Hansard*, 14 October 1996, p. 5177. This contrasts with Ackland's question concerning the actions of Kerr's office in Hobart when Skrijel was handing out pamphlets about his case critical of the Minister prior to the last Federal election: 'But why should a Minister be so sensitive as to involve the Federal Police in the free expression of issues by a concerned citizen participating in the democratic process of an election campaign? This is an even more interesting question.' *Financial Review*, 9 February 1996.
4. 'Police inquiry should be wider', *Canberra Times*, 8 August 1996; 'Broader inquiry terms not justified', *Canberra Times*, 12 August 1996.
5. 'Go-ahead for inquiry into ACT police', *Canberra Times*, 17 October 1996.
6. 'Justice for rich, says cleared man', *the Age*, 1 September 1996, p.5.
7. Lewis, R., 'Serious Business — The Global Heroin Economy' in *Big Deal: The Politics of the Illicit Drugs Business*, Pluto Press, London, 1985.