Chapter 9

Great Harm to Innocent People
An ICAC story

Margaret Cunneen

C. S. Lewis said of the various tyrannies to which one can be subject, the most oppressive of all is the tyranny of the busybody and the do-gooder, supposedly acting in our own interest.

The robber barons at least sometimes go to sleep and sometimes have their appetites sated. But those oppressing us for our own good have the benefit of believing in their own conscience that they are helping us, all of us – and so they never relent. Nor can they ever accept that they are wrong. And so much idealism is no more than disguised love of power.

I shall come back to them.

Our common law system, with all its appeals, formalities and procedures, checks and balances, hard-won evidentiary rules developed for the protection of individual liberty, may be slow and even arcane. But the hierarchy of the courts, and the many sets of eyes that review every allegation at every point, ensure that the citizen is not subject to the arbitrary view of a single person in whom is reposed the functions of investigator, prosecutor, judge and gaoler.

The right to a fair trial is an essential human right in all countries respecting the rule of law. In fact, the right is much more widespread than that. Article 11 of the Universal Declaration of Human Rights declares that: "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law".

It is the "one golden thread always to be seen" throughout the web of our common law, as Lord Sankey observed in 1935 in the House of Lords in *Woolmington*. You will recall that Woolmington was acquitted three days before his scheduled execution, the Lords pronouncing:

> No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner [beyond reasonable doubt] is part of the common law . . . and no attempt to whittle it down can be entertained.

The presumption of innocence finds expression in the direction to the jury of the onus of proof that rests upon the Crown. It is proof beyond a reasonable doubt of every element of an offence as an essential condition precedent to conviction which gives effect to the presumption.

We depend on juries to represent the community in the practical application of the common law. Not only are we confident that they offer a tribunal of fact that is, because there are twelve minds and twelve sets of life experience, more worldly than a single set of eyes, but we know that between twelve people any prejudice that may be present in one person is leavened out and eliminated.

At the start of a trial a jury is warned to keep an open mind and that it will not be until all the evidence is heard that they will be in a position to evaluate it. "Wait", the judge will say, "keep an open mind until all the evidence is in. You must not rush to an opinion".

I had heard this admonition to juries hundreds of times until I realised that it is a recognition of the human tendency to form an opinion early in an evidence-evaluation process

and then to evaluate further evidence with a bias that favours that initial opinion. Fortunately, in a trial, each side – guilty and not guilty – is represented.

The only evidence admitted, and can possibly become public, is evidence deemed admissible by a disinterested judge. In other words, it is material which is relevant, has not been obtained illegally, and is not unfairly prejudicial.

Prosecutors in common law states are subject to additional ethical rules governing their conduct in court that do not apply to other barristers. They must not do even a little wrong for the sake of expediency, or to please any power.

Prosecuting is a specialised role, not easily assimilated by legal practitioners. Advocacy in the role must be conducted temperately and with detachment and restraint.

And prosecutors are reminded that they are not investigators. They have neither the training nor the hierarchy of investigative experience behind them.

Lawyers are trained to elicit evidence from a witness in the courtroom. But they did not gather the evidence.

It is the professional detective who is trained in ethical and effective investigative techniques. The trained and ethical investigator commences with an open mind, seeking knowledge of all facets of an event, those consistent with innocence and those consistent with guilt. There is no pre-determined hypothesis. And each investigation has terms of reference which establish a focus and set limits on itself. There is never a justifiable reason for a professional investigator to suppress relevant information obtained during his or her investigation.

You may not be surprised to hear that, this being the 40th year in which I have served in our common law system, I have developed a guarded sense of caution about governments creating self-contained, autonomous investigating bodies that are not courts and which have no judicial functions but which have extraordinary powers which abrogate fundamental common law and human rights and privileges. As the High Court of Australia has said:

> The duties of the commission [any commission] are to inquire and report . . . the commission can neither decide nor determine anything and nothing that it does can in any way affect the legal position of any person. Its powers and functions are non-judicial.

These bodies have no power to determine guilt but that message is lost because the media machines that they invariably have ensure that any apparently damaging material they can suggest about their targets is spread across the press, often embroidered by favoured media outlets with salacious associations that are tenuous at best and malicious fiction at worst.

But surely bodies with coercive powers which exceed those of the police, the ability through their self-promoting media machines to inflict serious damage on the lives and reputations of individuals even during the course of their investigations, and the power to issue public reports that condemn people irreparably without need of proper proof, should be required to apply high standards of natural justice.

These government investigative bodies, commissions of various sorts, are concerned with a much earlier phase than the courts – determining whether to recommend that a charge be laid – and their recommendation is not determinative. They bring together, in a single office, the roles of investigator, prosecutor, judge and media unit, abandoning the traditional separation of those

roles, and the objectivity and fresh sets of eyes on an allegation, or suspicion, that the proper criminal justice system boasts.

Because these government agencies are not courts and cannot convict or pass sentence, they have developed a mode of punishment which is often far worse. In 1998, showing great prescience, the then Chief Justice of the High Court, the Honourable Murray Gleeson, AC, QC, lamented:

> the ever widening gap between what is required to be done in a court of law to prove that a person is guilty of misconduct and what is sufficient, outside a court of law, to create about a person such an atmosphere of suspicion, distrust and hostility, that for all practical purposes it does not matter whether anything can be proved against him.

On 30 July 2014, my life and the life of each member of my family, changed forever.

It was early in the morning, I was asleep and alone in my home in Sydney. (KNOCK, KNOCK). I shuffled to the front door wearing only a dressing gown. Through the glass I saw two grim looking people, of the style of police but not nearly as well-dressed. Still, my immediate thought was that this was a death message about one of my three sons. I opened the door with the greatest dread and, hardly finding voice, said "which one?"

It was at one level a relief when the answer came back: "we are from ICAC [Independent Commission Against Corruption] and we have a warrant. Can we come in?" They flashed badges that were like police badges but with the dread four letter word in blood-red like violent graffiti over the coat of arms of the State I have served for 40 years.

I let them in. They handed me what was not a warrant at all but a notice to produce. I recognised the signature at once. It was the signature of a woman with whom I had worked side by side as solicitors in the late 1980s, including over the time that I was carrying my eldest son, Steve. We had been Crown Prosecutors together for years and I have appeared before her in both the courts to which she was later appointed. We have often attended the same social and professional functions and we know each other's partners. In fact, she chatted at some length to my husband, Greg, who at one stage had taught her son, at a Christmas party only six months before.

I said, "I've only just woken up. Is this the first of April?" They grimly told me they wanted my mobile phones. I truly thought it was a practical joke, because I also had a solicitor friend who worked at ICAC and both she and the Commissioner who had signed the document well knew where I lived.

I asked what this was all about, if they knew. They said they did, but I was not permitted to know.

I made a reference to Kafka, which was not appreciated – in either sense.

My phones then started ringing in another room. I did not answer them.

I asked them where they worked before their current position. "I'm from the UK".

Yes, I'd gathered that. The other was from Queensland.

I made a cup of tea, declined by my guests. I felt ridiculous in only a dressing gown. I knew that this was either a gee-up or a stuff-up.

Then I started thinking that I must have inadvertently used my work phone for a private purpose. But, no, it is so old people ask if I got it from the Smithsonian – I use my personal phone for work whenever I can.

Then my husband, Greg, arrived. I said, "these people want my phones". He said, "well, I hope they don't want mine or I won't know where my work is on today". Then he was handed a Notice. He said, "Look who's signed this, Marg". He recognised the name – even the handwriting, at once.

The phones were handed over, after a false undertaking that they would all be back within a day or so, and I was extremely confident that whatever malicious rumour or false complaint they were acting on, they would soon realise that it was all a monumental blunder.

And then I was told, by Greg, that another team had swooped upon my son's home. He and his girlfriend, Sophia, had never heard of ICAC. They are not in government service. Sophia asked whether they were the police. She was told: "we're above the police" and that if she did not hand over her phone she would go to gaol for five years. When my son asked what ICAC does, one of them whom we now know to be one Grainger, said: "We're the ones who got the Obeids".

The right to privacy is surely a fundamental human right. It was shocking that a demand should be made by these employees of an esoteric arm of the executive government for these young people, neither of whom has ever worked for the government, to be woken from their beds to hand over their phones and given no reason whatever.

And it started to hit me, what a diabolical humiliation it was for me that a woman I had known well for 30 years would have access to my contacts lists and to texts with people we both knew. All my personal communications over the last four years – and my work phone – NSW Government issue with about ten years on the clock.

I headed directly to my son's place. I could barely concentrate on driving, wondering what on earth it could all be about. We could not come up with the slightest idea of what linked the four of us in such a way as to attract the attention of a corruption agency.

I knew, then, that my children had been subjected to fear, intimidation and humiliation because someone was after me.

You are in trouble and you are not allowed to know why.

The people who swoop in to harass you are very invested in the matter. They know what it is about but they will not tell *you*. If you get frustrated with them – or your child or husband does – that just helps them to assuage their consciences about what they are about to do to your family, your work and your good name.

The staff of ICAC are all part of a team, championing their achievements with a crusading zeal. And the specific ethical obligations of investigator and prosecutor are blurred by people doing both and defending, as it were, the investigation they have initiated or directed.

Even with the best will in the world, the people making the decisions in agencies like ICAC to search and seize and go public are highly likely to be influenced, and influenced early, by the suspicions that are part of the investigative process and susceptible to making subjective rather than objective assessments of the need for the use of invasive powers.

None of the roller coaster ordeal that followed would have been nearly as difficult if it was only about me. But it would have been over faster, too, because I would not have been motivated to challenge it.

I am very accustomed to professional attacks.

I had, just the week before, withstood a curious episode in the Royal Commission into Institutional Responses to Child Abuse. I was cross-examined for two days about an advice I had

given 10 years before about allegations of indecent assault by a swimming coach in the early 1980s. My then boss, Nick Cowdery, had agreed with the advice and sent it with his endorsement to his counterpart in Queensland. I remain of the view that the advice was sound. But the Commissioner was convinced the coach (who has never been brought before the courts and remains a person of good character) was guilty. It was an unprecedented thing for a barrister to be hauled over the coals, in effect, for a bona fide advice expressing genuinely held views which had been endorsed by others.

Which brings me to something the Royal Commissioner, Peter McClellan, said in quite a good paper about ICAC, delivered at Sydney University Law School 25 years ago. In "ICAC, A Barrister's Perspective", he said:

> The ICAC will ultimately be effective only if its performance justifies its extraordinary powers. If the Commission is to justify those powers it must be scrupulously fair, value the rights of individuals and accept that persons should only be convicted after due process in the relevant court. The experience of the first twelve months is that as a result of ICAC's actions . . . great harm has been done to many innocent people.

But I am accustomed to courtroom tactics and techniques and, knowing I had never in my life acted corruptly, I would have faced the ICAC business and the allegation would ultimately have been found to be baseless, as it now has.

But for Steve and Sophia it was a different matter. David Bennett, QC, with whom I was (and still am) on the Bar Council, said to me: "Whatever you do, don't let them tear your children apart limb from limb".

It was eight days later that we all had another visit. Embarrassingly for Sophia, they showed up at her workplace wearing obtrusive body cameras. Sophia's boss told her to get a new boyfriend.

I was at home and I thought they were there to return my phone. No such luck. This time they had a search warrant, which they had realised was needed to cover the seizure of the phones, although I thought (and they knew it) that they were going to spend the day turning my house over. They arrived with my personal phone in their hands and then proceeded with the risible and blundering contrivance of seizing the only thing on the warrant – a phone that they had brought to the premises themselves.

When the ICAC Commissioner was asked, by the Parliamentary Committee into ICAC in March 2016, about the practice of entering our homes and seizing our phones without any warrant, she made an extraordinary admission. She said:

> the notice to produce was a very low-key, unobtrusive way of obtaining the phones and when we had access to the contents of the phones, we could determine whether or not there was anything we needed to pursue.

She thereby admits that ICAC had no basis for seeking Search Warrants to obtain the phones at the time she used Notices to Produce illegally to seize the phones *to search for something to justify obtaining a Search Warrant.*

It is trite to observe that law enforcement agencies are simply not permitted to enter a citizen's home and seize his or her phone without a warrant in order to conduct a fishing expedition to find something upon which to justify seeking a Warrant for the same phone. The

Notice to Produce contained no allegation because they had not worked one out. (A Search Warrant must contain an indication of the nature of the investigation.) Using a Search Warrant, a week after taking the phones, to seize a phone they brought back to my home themselves, is an extraordinary abuse of an extraordinary power.

Finally, we were advised of the allegation that Steve and I had counselled Sophia to feign chest pain to avoid a breath test at the scene of a car accident of 31 May and that she had done so. We were all in the frame for attempting to pervert the course of justice.

My husband, Greg, was teaching taekwondo to pre-school children at the time he was paid a visit by the camera-wearing spooks waving a summons in his face. The children's mothers were no doubt nonplussed to see what was going on with this hitherto respected teacher.

The next week, two years ago now, there were compulsory examinations. We all had to get lawyers, separate lawyers. I started to wonder how people who did not know any lawyers could afford it. Thank God I did not know what was to come! There's no right to silence there, as there is in the criminal courts. Yet this was an alleged crime. Why was it never referred to the police? The answer can only be that they knew the police would hose it out in 10 minutes flat because Sophia's blood test proved she had been completely sober and nothing untoward had happened at the scene. We each gave our accounts of the events surrounding Sophia's car crash, when she was T-boned by a vehicle travelling at high speed while she was stationary at a red light driving to my home after work on a Saturday afternoon.

Then, nothing. We were quite comfortable that our explanations of what really happened had saved us from any further trauma. Sophia was in a massive five car crash, not her fault, and had been rescued and placed in the back of the ambulance before police arrived. Steve arrived later and I, later still – **after the police**.

Sophia was taken to hospital, and routinely blood tested with a 0.00 result. I had been the last to know about the crash because Sophia rang my son and he rang his father, not me – there was no legal advice required. It was quite clear that ICAC had no idea that Sophia had indeed been tested and found to have no alcohol in her system, nor were they aware that Sophia never spoke to the police at the scene so it was quite impossible for her to have told them any lies.

The Australian published a feature piece about it all and I learned that there were more than a dozen eyewitnesses to the crash, none of whom had been spoken to by ICAC. They described how the car had become airborne on its side, with Sophia suspended by the seatbelt. The man who rescued Sophia from the wreck, thinking it was about to explode, said he did not smell any alcohol on her. All confirmed the ambulance arrived well before the police and it was a hospital blood-test, rather than a roadside breath-test, situation. She had been asked by paramedics whether she had chest pain and she said she did, which was entirely unsurprising.

We thought that all that had been accepted and then, two and a half months later, public hearings were announced at the same time summonses were issued to us by e-mail. I have since found out that the police and ambulance personnel were called for private examination at ICAC the day before public hearings were announced and were each handed summonses as they left the hearing. None had any evidence in support of the allegation. They all said that they had seen or heard nothing untoward, and that I had only arrived at the heel of the hunt, in any event. But the point is, the decision had been made to proceed to a public hearing regardless of what those witnesses would say. What other decisions had already been predetermined?

When I read Hedley Thomas's report on the Greyhound Inquiry in New South Wales, it struck a chord. He maintained that Counsel Assisting, in his opening address last September, "gave every indication he had made up his mind before the start of public hearings". "Right from the outset", Mr Thomas wrote, he "made it plain that greyhound racing was bad for too many animals. He introduced an amorphous requirement, saying that 'a sport that utilises animals cannot operate without a social licence' and declaring the industry had lost this indeterminate thing".

A veterinarian from Casino with extensive experience in the industry was quoted as saying that the short public hearings relied heavily on a few vets with known predetermined agendas who worked together to provide the commission with false and/or misleading evidence. The retired integrity chief for the industry said that "there was a narrow and pointed line of questioning tending to lead witnesses to answer questions favourable to the opening address".

One is left with the impression that government has been devolved onto lawyers who hold to the desired agenda, whose positions are protected, when it is supposed to be done by elected representatives.

And because the commissions are generally headed by a former judge, they carry the majesty of the law and the appearance of a court when all the while they are part of the executive without any judicial functions. The politicians who rely on them, and champion them, often call the commissioner, who is in reality merely the head investigator, Justice so-and-so.

There is an enormous trust and acceptance of these bodies, some of which almost claim infallibility. And then redress to the proper courts of law is often removed or made impossible. I shall return to that thought.

The day after ICAC announced in the press that public hearings into the allegation was the first of many days when press photographers lined the footpath outside my home, and they were at my son's home and his girlfriend's workplace. We were all over the news.

Allegations of perverting the course of justice, with none of the real facts, appeared on google entries about my son and his girlfriend. Every future potential employer they have will see them.

I felt diminished in my children's eyes. I had never been in trouble before. I felt humiliated everywhere I went. Because of the intensity of the pursuit, on one occasion while I was waiting on the edge of a platform for a train, I realised that this would go on even if . . . I could never catch another train.

If my child was accused of a crime he would have a right to silence. He would be given a brief containing all the evidence against him. He would have a privilege against self-incrimination.

Steve and Sophia would never have been in this nightmare if someone was not interested in pursuing me. I had to protect them and every lawyer I knew urged upon me the view that ICAC had clearly gone way beyond its charter.

ICAC had now neutered both major political parties, taking down a Premier, a Police Minister and more, had ended the career of a fine State Emergency Services Commissioner for the obscure offence of dismissing a whistleblower, expropriated mining leases to the detriment of thousands of innocent shareholders in an equally innocent company, Nucoal (how is ICAC qualified to make such recommendations when it understands nothing about sovereign risk and the consequences to the investment reputation of NSW? And even ICAC recommended Nucoal

be compensated when it realised it was in error – but the Premier said the State did not have the money).

Now it was going after a barrister, a silk, a member of the Bar Council, a Deputy Senior Crown Prosecutor and Commissioner into an Inquiry about pedophile priests with almost 40 years unblemished service AND her family – over a car accident she was nowhere near. This outfit wants to show that it can go anywhere it likes. The traditional guardians of our civil society are not only not immune – it is as though they are targeted.

The treatment of Mr Murray Kear, a decorated fireman who rose to the position of Commissioner of State Emergency Services, was particularly disgraceful. His career was destroyed after he was accused of dismissing a "whistleblower". In this case the said whistleblower had made allegations against another employee which were false. Mr Kear made herculean efforts to counsel her and help her adjust to the organisation and the demands of her role. Finally her services were dispensed with and she complained to ICAC.

A public hearing was held and ICAC branded Mr Kear corrupt and recommended criminal charges. He was asked to resign and did, losing superannuation benefits that can never be recovered.

During the criminal proceedings it was discovered that ICAC had not served upon Mr Kear evidence from witnesses in private hearings who had given evidence favourable to him. The Magistrate said, "I find that investigators cannot simply chose not to serve such evidence from witnesses because they have provided evidence contrary to the prosecution case". He found that the ICAC investigation had been conducted in an unreasonable and improper manner, the proceedings had been initiated without reasonable cause and he dismissed the charge because the evidence in support of the defendant's contention was overwhelming.

But ICAC still maintains Mr Kear is corrupt and will not remove the finding from its website. He has not been offered the chance to return to his position.

One of the extraordinary powers this outfit has is the power to initiate investigations without anyone else granting terms of reference or otherwise authorising them, formulating its own allegations and investigating in its own way. It does not require a victim, a complainant, an aggrieved bystander or a policeman saying these people should be charged. It just starts, and no-one is there to cross-examine about what they allege against you. You just do not know where it has come from. You just know it is wrong.

We challenged ICAC's jurisdiction to investigate an allegation that did not amount to corruption and the NSW Court of Appeal agreed with us. But within minutes of the decision, ICAC announced it would appeal to the High Court. I had always hoped to get to the High Court. Never in my wildest dreams could I have imagined it would be as one of the respondents. More cameras at home.

I wondered how my security at this house would ever be adequate for me to get back to prosecuting murderers. I woke every morning with the same foreboding feeling. I had become used to a wave of horror every time I passed my front door and palpitations anytime anyone knocked. My family had become used to unloading our phones and going outside to talk to one another. And I had lost five kilos on the ICAC diet.

In the High Court appeal by ICAC it was accepted for the purposes of the jurisdictional argument, erroneously, that Sophia had lied to police to avoid a roadside breath test. The High Court dismissed ICAC's appeal, finding that that conduct could not be corruption.

When ICAC carted my son, Sophia and me to the High Court, the Chief Justice (concerned for my family's finances and the enormous imbalance between us and the unlimited resources of the State) raised the question of costs. He said to counsel for ICAC that, as they sought to pursue the appeal because it affected "a variety of other investigations", they should undertake to pay our costs. That undertaking was made. However, ICAC has since challenged our costs all the way, resulting in them being severely taxed down to about half what has been incurred. My family will end up hundreds of thousands of dollars out of pocket. ICAC knows that even when it loses, it can harm targeted families in this crippling fashion.

Three weeks later, on 6 May 2015, after ICAC demanded it, the New South Wales Parliament passed legislation retrospectively to validate ICAC's ultra vires acts and thereby stripped the right of victims of ICAC overreach to legal redress. Because ICAC had been stopped from investigating us, it had to find another way to attack us.

Then I suffered an excruciating public humiliation. I had started a murder trial at Darlinghurst that received a small amount of press on the second day. On the morning of the third day, while I was on my feet taking evidence from the bereaved son of the murdered lady, I was conscious of dozens of calls and messages registering on my phone. At morning tea time there were many more press photographers outside the court than there had been for the start of the trial and they were asking me for comments on the latest developments.

ICAC had made a 622-word press release which read as an indictment. It was, arguably, a de facto report on the investigation which the High Court said had been entirely illegal. It said that the matter had been referred to the Director of Public Prosecutions (my own employer) for consideration of criminal charges against all three of us and, failing that, disciplinary proceedings against me. It was all over the papers, and the press were all over the front of my home, again. The pursuit of my family over a car accident in which the driver, who was not me, was not at fault and absolutely sober, was placed higher in priority than a man's murder trial in which the bereaved relatives had already completed their painful ordeal of giving evidence.

The press release was virtually a finding of guilt. What was the real purpose of having scheduled a public hearing if they had already made up their mind? Just a means to humiliate a family.

I was suspended from duty by the Director of Public Prosecutions (DPP), who presumably did not realise the paucity of the so-called evidence as he was alive to his conflict of interest and sent the matter to be evaluated by the Chief Crown Prosecutor of Victoria and the Solicitor-General of NSW. I found out since that the Commissioner, at this time, drew to the attention of the DPP a couple of text messages from two and a half years before Sophia's car crash in which I had been critical of him not cross-examining a witness in the appeal about a criminal trial in which I had appeared for the Crown. It had all the appearance of an attempt to engineer a bias in him. No wonder he suspended me from duty.

The next day I had to appear in my trial to withdraw. I had to be up early and focused. I was dressing and walked into a front room in my underwear. There was a TV camera at the window. I ran out to the bathroom and looked in the mirror. I knew I had a choice of two reactions: crying with violation or "hey, you don't look too bad". I went with the latter.

Walking up to Darlinghurst, having just been suspended, to withdraw from a murder trial because I had been accused by ICAC of attempting to pervert the course of justice was one of the most painful experiences of my life.

And, as I left at the first adjournment, defence counsel handed me a note. It was from the accused, telling me that he was so sorry about what happened, that it was obviously a witchhunt and wishing the best for my family and me. The man was later convicted of murder. But he was not heartless.

This was the fourth time in the whole saga that I had thought it was all over, only to find it had grown a new tentacle. That roller coaster effect – being so relieved after the private hearing, so relieved after the Court of Appeal, so relieved after the High Court, was what really exacerbated the torture, for every member of the family. I have two other sons who were 24 and 22 when this began, and they have suffered too. The kids did not know it but I had risked our home in legal costs to prove what I knew in my gut from the start was true. ICAC had no right to do this to my family.

The Solicitor-General soon announced that there was no wrong-doing and there would be no charges against us. About five months later, the ICAC Inspector, the Honourable David Levine, AO, RFD, QC, published his Report on ICAC's attempted investigation of my family. He labelled it a "debacle", a "grotesquerie" and the stuff of a family's "worst nightmare". He illustrated instances of illegality and unjust and oppressive behaviour in the aborted investigation. And he concluded:

> Whatever was captured by happenstance as having been said or done by Ms Cunneen finds no support in reliable, credible or cogent material, let alone material elevated to constitute evidence, of any conduct on her part, let alone of her son or his girlfriend, warranting the intervention and intrusive exploration by one of the most powerful agencies of this State.

This Report precipitated an investigation by the Parliamentary Committee into the workings of ICAC. ICAC, however, tried to make it about me again, rather than them. Material was leaked to the favoured media outlet that has never been served on me. I query whether it exists. But, unsurprisingly, given the decision of the Solicitor-General that there was no evidence of any criminality, there was no "smoking gun". There was instead an attitude of contempt displayed toward the ICAC Inspector and a resistance to the Committee's attempt at its duty of oversight of ICAC. It was almost a declaration of infallibility.

"We need a strong ICAC", the catchcry goes. Well, we need a strong police force, even more, and we have one because of the stringent accountability and constant scrutiny to which it is subject, including the way its methods and decision-making are tested each day in our proper courts. Police know that they may be cross-examined in court about every decision they make about any suspect. But the people who make the decisions at ICAC and who storm people's homes and seize their phones and computers almost always remain faceless.

It is time to query whether "independence" is a quality with no downside. Where there are no controls and no accountability, in any organisation, the conditions for corruption to flourish are rife.

Because these government agencies are not courts and can therefore not convict, nor pass sentence, they have developed a means of punishment which is in many cases far worse. Well in advance of any charge being laid, often in cases where charges will never be laid and even in cases where the decision that no charge will be laid has already been made by the proper authorities, ICAC justifies its existence by condemning the presumed innocent in the media.

Even if we have done nothing for which the proper law would punish us, can any of us be confident that we will not be caught up in an effort to investigate the perceived breach of some pettifogging ordinance that a government official has decided is suddenly of such importance that all the protections of the common law are to be circumvented? Or can we be satisfied we will not be targeted for intrusive inspection and character destruction because of who we are or what we believe?

We must insist that all government agencies remain subject to the rule of law. If we do not, we can be certain that our hard-won freedoms and protections under the common law will be inexorably eroded.

There was no nobility in this pursuit. Vulgar, prurient, personal. There was a mean and malign feeling about this. It was sneaky and the attempts to justify it were disingenuous.