The book is well written and well worth reading, both as a general report on computerisation in developing countries and as an introduction to the more particular issues of the ASEAN region. Some minor comments may however be of relevance.

It has become an unfortunate habit to meausure computerisation by the numbers (or value) of computers installed. First, this does not necessarily reflect the true usage of computers, as it is rather an indication of input rather than of output (achievements). And second, different sources tend to give widely varying numbers. Another study of the region thus shows figures that are much lower for some countries (e.g. Singapore and Thailand, about one tenth only) whereas for other countries (e.g. the Philippines) the figures are considerably higher.[1]

The second comment is perhaps of a more academic nature. Although the authors tackle the rhetoric of the computer vendos they do not refrain from using rhetoric themselves in expressions like 'post industrial information age', 'information revolution' etc. These are mythological concepts that tend to over-simplify the many-faceted and complex developments in the world today. Too simplified also is the short discussion of development theory which, in my opinion,is not the strongest part of the book.

It is always a risk to explain too much by too little. But even if the mechanisms and conditions behind the computerisation process in the ASEAN region may look different on different levels and from different perspectives and may be more complex than they appear in the book, the authors have delivered a status report from the region that is of much interest. That computers are regarded as vital tools for the development process in the region is obvious. For what kind of development remains, however, to be seen.

## REFERENCE

1. See M. Kaul, 'Impact of information technology in government systems: a regional overview of Asian experiences', *Information Technology for Development,* 2, 2, June 1987.

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**The Legal Implications of Disclosure in the Public Interest: An Analysis of Prohibitions and Protections with Particular Reference to Employers and Employees** *by Yvonne Cripps*
(ESC Publishing Limited, Oxford, 1987) pp. xx + 299, 35.50 pounds, ISBN 0-906214-40-8.

The English language constantly demonstrates its remarkable adaptability by absorbing new words which readily convey complex ideas. 'Whistleblowing' is one of these. Its advent can be traced, possibly, to the pioneering work by Nader, Perkas and Blackwell (eds), *Whistle Blowing, The Report of the Conference on Professional Responsibility* (1972). More recently, in the context of the legal duties of confidentiality and secrecy, the subject has been examined by many

law reform and like inquiries. See, e.g., Law Reform Commission of Ontario, *Political Activity, Public Comment and Disclosure by Crown and Employees* (1986). In the Federal sphere, and in many of the States of the United States, legislation has been enacted to protect 'whistleblowers' from statutory breaches which would otherwise apply, or from retaliation in their employment; see, e.g., *Civil Service Reform Act* of 1978, s 2302(b)(8)(USA).

In Australia the subject arose during 1987 in at least two celebrated instances. One was the effort of two researchers working for 'Foundation 41' to bring to attention alleged defects in the research of a senior colleague (Dr William McBride). Interestingly, each employee, after resigning, had great difficulty in securing employment. They blamed this fact on the suspicion of 'whistleblowers', public and private, in the scientific community and beyond.

Even more celebrated was the case of Peter Wright, the retired officer of the British Security Service, MI5. His memoirs, *Spycatcher,* have become, in the words of the Chief Justice of New Zealand 'the most litigated book of all time'. Attempts by the United Kingdom Government to prevent publication of *Spycatcher* (and/or to deprive Mr Wright of his profits from their publication) are continuing before the courts of a number of countries. One such case was before the New South Wales Court of Appeal when this book by Yvonne Cripps was sent to me for review. The book is the product of Dr Cripps' research at Cambridge University. In her introduction, she suggests that she was encouraged to choose this topic by several notorious cases in England where employees, generally of the Crown or Crown agencies, revealed secrets in pursuit of their perspective of a public interest. Their names are well known to the students of this *genre:* Sarah Tisdall, Clive Ponting, Stanley Adams and the British Steel 'mole'. To these cases can now be added Peter Wright.

There is a special irony in Mr Wright's case. He had spent a large part of his life, whilst working for MI5, trying to track down and expose those who were responsible for unauthorised communication of secrets. But then, in his memoirs, he purports to expose many more and for the expressed object of calling to attention the suggested inattention to the remaining 'moles' in the service. One has only to mention Burgess, McLean, Philby and Blunt, to show how defective were the mechanisms of law, convention and honour which secured the 'secrecy' of the British 'Secret Service'.

This book is not about traitors. It concerns the legal, ethical and practical dilemmas facing employees, bound to secrecy, who come to the view that their duties as citizens and moral human beings, require them to disclose something to the public, or to a section of the public. The book is an exploration of the way the law, until now, has handled this dilemma. Obviously, people in positions of trust should normally keep the secrets of that trust. Equally clearly, it cannot be left to individual employees to be the final arbiters of the public interest that would excuse disclosure. Likewise, it cannot be left entirely to the holders of the secrets. They may be blinded by self-interest, tradition or the covering up of wrong doing — so that they do not see where the true public interest lies. That is why, in the end, the responsibility of judging whether the 'whistleblower' was justified, lies with the courts. But the courts must perform their functions, realising that sometimes (as in national security matters) they may not know or understand the full context against which the disclosure must be evaluated.

After a few interesting illustrations of employee disclosures, both in the public and private sectors, Dr Cripps embarks on a detailed examination of the categories developed by the law to prevent disclosure of confidential material

and to defend that disclosure, where an appeal is made to the justification of a higher public interest. She traces the development of the action for breach of confidence. It is, esentially, an equitable remedy, i.e., one developed in the English Court of Chancery. That court frequently developed rights of action based upon the conscience of the individual, as distinct from the property interests which tended to dominate in the courts of common law. Dr Cripps points out that the first recorded instance of a public interest defence to an action for breach of confidence appeared in the first half of the eighteenth century. We lawyers have so well recorded our precedents that these things can often be readily traced. In 1743, an English court approved the argument that, although an attorney could not normally be questioned as to a matter which came to his knowledge as such, that there was an exception:

> If he is employed as an attorney in any unlawful or wicked act, his duty to the public obliges him to disclose it.

I will not weary the reader of this review with the cases since 1743. Many of them are analysed in the judgements in the *Spycatcher* case. Those judgements now form an interesting supplement to Dr Cripps' book. See *Attorney General for the United Kingdom v Heinemann Publishers Australia Pty Limited & Wright* (1987) 10 NSWLR 86.

Factors which have influenced courts in their assessment of the asserted appeal to public interest have included the subject matter of the disclosure; the defendant's motives and beliefs; the timing of the disclosure; and the persons to whom the material was disclosed. All of these are well categorised by Dr Cripps.

She then turns to the special predicament of public sector employees. In the United Kingdom, there is a panoply of legal restraints. They include the Civil Service Code, specific undertakings secured on entry to and exit from Crown employment and legislation such as the notorious *Official Secrects Act* 1911. One of the English law lords, Lord Scarman, once bemoaned that he was born within a month of the passage of that Act:

> . . . and I regret to tell you that both of us are still going strong and are in active, if not continuous, use by our society. You will not, I hope, think me mean or churlish if I confide in you that I hope to live long enough to see the death of my contemporary. I shall be bitterly disappointed, though not, I fear, surprised, if I die first.

After laying the basis of the duties of confidence and secrecy by employees — both in the public and private sectors — Dr Cripps turns to an analysis of the use of the defence of public interest to actions brought for breaches of secrecy and confidentiality. First, she examines cases of disclosure of matters protected by copyright and patents. Then she turns to a number of economic torts (or civil wrongs) and offences against property. She then examines the public interest as a defence to defamation actions which arise out of disclosures of information. There is then an analysis of certain celebrated cases of disclosure, held to be contempt of court, which the media justified by an appeal to the public interest. Probably the most celebrated of these was the *Sunday Times* case, concerning the thalidomide disaster. Although the *Sunday Times* lost in the English Courts, it took its case to the European Court of Human Rights. So strong was the judgement of that court that it ultimately procured an amendment of the English law of contempt.

Finally, Dr Cripps examines the public interest as a defence to proceedings initiated in the attempt to discover the identity of employees who have disclosed

information. Where there is a 'mole', the possessors of information of high secrecy or high confidentiality are usually most determined in their pursuit of the source. Unless they can identify it, the flow may continue. But the search may bring them into conflict with the claim of the media to protect its sources of informaton.

After her lengthy analysis of the problem, Dr Cripps turns to the two remaining sections of the book. The first is an examination of the law in England which provides protection to employees against victimisation and wrongful or unfair dismissal. Some only of this law is relevant to Australia. Finally, there is a section on reform of the law. In part this is an examination of numerous proposals for reform of the *Official Secrets Act* and of the law of confidence, copyright and breach of contract. It is clear that Dr Cripps favours the adoption of the 1981 proposal of the English Law Commission that there should be a specific statutory defence for the disclosure and use of confidential information where the disclosure can be justified as being in the public interest. The Law Commission would have put the onus of proof on the party alleging unlawful disclosure to show that "the public interest relied on by the defendant . . . is outweighed by the public interest involved in upholding the confidentiality of the information". This proposal has never been enacted in England. But some of the decisions in the English courts have come fairly close to adopting a similar principle. By the end of the Wright litigation it should be known whether the developments of the law in the courts have overtaken the lethargy of Parliament and the obduracy of the Executive Government in failing to adopt the Law Commission's proposal.

In Australia and in New Zealand a different regime of secrecy applies, although much of the basic law of confidence is still the same. These similarities and differences must be noted in using Dr Cripps' book. It was, in part, the differences between the greater openness of Australian and New Zealand society, each with Freedom of Information Acts which made it unsuitable to enforce, in the antipodes, the stern regime of secrecy provided in the *Official Secrets Act* 1911. The United Kingdom Government did not even try to stop the publication of *Spycatcher* in Canada and the United States of America because of constitutional guarantees of free speech and a free press there.

It is this last point which brings me to the significance of this book for the field of informatics. Just as, in an earlier decade, the United States Constitution defended the publication of erotic material — and editions of *Penthouse* spread throughout the world battering down domestic laws of censorship, so, today, that constitution extends its influence beyond the United States, achieving a *de facto* bias towards the free flow of informaton — at least in the English speaking world. It is difficult, in the age of satellites and telefacsimile to keep secrets, once they are out. If I have a criticism of Dr Cripps' book it is her failure to put this ancient body of law, which she analyses so delicately and precisely, into a social and technological context, however briefly. The social context is hinted at: better educated employees and a growing tradition invoking a sense of duty beyond the immediate employer in service to a wider community. But the technological revolution that spreads information instantaneously around the world is virtually ignored in her book. Yet it was the very fact that once information has haemorrhaged, it cannot readily be retrieved that posed a difficulty for the courts with the memoirs of Mr Wright. Once the book was out in Canada and the United States — and read by travellers on the jumbo jets plying across the Atlantic, it became a trifle absurd to urge the courts of

Australia and New Zealand to ban the book. Contrary to popular belief, the courts do not like to look absurd.

To sum up, this is a timely book in a fast moving field of the law. Dr Cripps shows high analytical skill and a good sense of legal history. When she moves to a second edition, I hope that she will graft onto the text not only a reference to the expanding literature and case law in the interval but also an analysis of the social and technological circumstances which stimulate the whistleblowers of the world and provide them with new and most powerful weapons to achieve their aims. How, in these circumstances, society and the law protects an inevitably smaller but still legitimate realm of confidence from the opiniated, premature, or self-interested whistleblower seeking quick profits — may become the important question for the future.

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