

# Citizen above suspicion?

*Is Australia's Mark Leibler involved in a conspiracy to evade taxes? Part 2 of a report by an EIR Investigative Team.*

On Sunday April 29, 1990, Australians in the greater Sydney area picked up their copy of the *Sun-Herald* to see the glaring headline, "\$1 Billion Tax Rort Exposed." According to a Melbourne academic, Barbara Smith, backed up by investigative work by the *Sun-Herald*, the Australian Taxation Office was being "ripped off to the tune of more than \$1 billion a year by new tax avoidance schemes."

The charges triggered a parliamentary investigation, the Martin Committee, which confirmed Smith's charges: "bottom-of-the-harbor" tax avoidance schemes outlawed in 1982 had been replaced by far more "out-of-harbor" schemes.

In both instances, the name "Leibler" runs through the cases like a vein through marble. That has not kept Mark Leibler from holding three major posts concerning taxation policy—adviser to the Tax Commissioner, a member of the National Tax Liaison Group, and chairman of the Law Council of Australia's Taxation Committee.

In fact, Liberal Member of Parliament Ken Aldred, a member of the Public Accounting Committee, told Parliament that Leibler's presence on such tax office advisory bodies "put him in a position of acute conflict of interest and potentially compromised the integrity of the Tax Office."

## **Billion-dollar scam**

According to Barbara Smith's investigation, documents in the Tax Office files showed tax avoidance/fraud of at least \$1.8 billion a year over 10 years. Smith charged that the tax scams probably increased Australia's foreign debt by \$30 billion. Massive amounts of money were moving offshore, especially to Hong Kong, a known haven of drug money.

In the earlier bottom-of-the-harbor schemes, a company would be stripped of its cash by those seeking to avoid taxes, its shell sold to a new paper company, and the records of the original company consigned to the "bottom of the harbor." Mark Leibler was a director of five of the companies stripped in this way.

In out-of-harbor schemes, income-earning assets would be placed, either by individuals or corporations, in a trust and the income from that trust directed to a beneficiary overseas. The Australians sending the funds would pay only a

10% tax rate, as opposed to a normal rate of as high as 49%, depending on the "donor's" tax bracket. The beneficiary would then loan the money back into Australia to those who had sent it out, and the "borrowers" would claim a tax deduction on the interest on this "loan." In many cases, the money never even left Australia.

In a variation on this theme, all income from the trust would be sent abroad to a foreign charity, with a tax deduction taken in Australia for the full amount. The "charity," if it existed at all, would take a small percentage, and deposit the funds into an offshore account where it could be "loaned" back into Australia, again with a deduction taken on the interest.

The same people, Smith emphasized, who had been active in the earlier bottom-of-the-harbor schemes were active in the new ones. "While Australian pensioners are stuck in a poverty trap due to the onerous rules on incomes and assets tests," she continued, "rorts are allowed to continue using the 10% interest withholding tax. Young Australians are also living in poverty due to high mortgage rates and the non-deductibility of their interest."

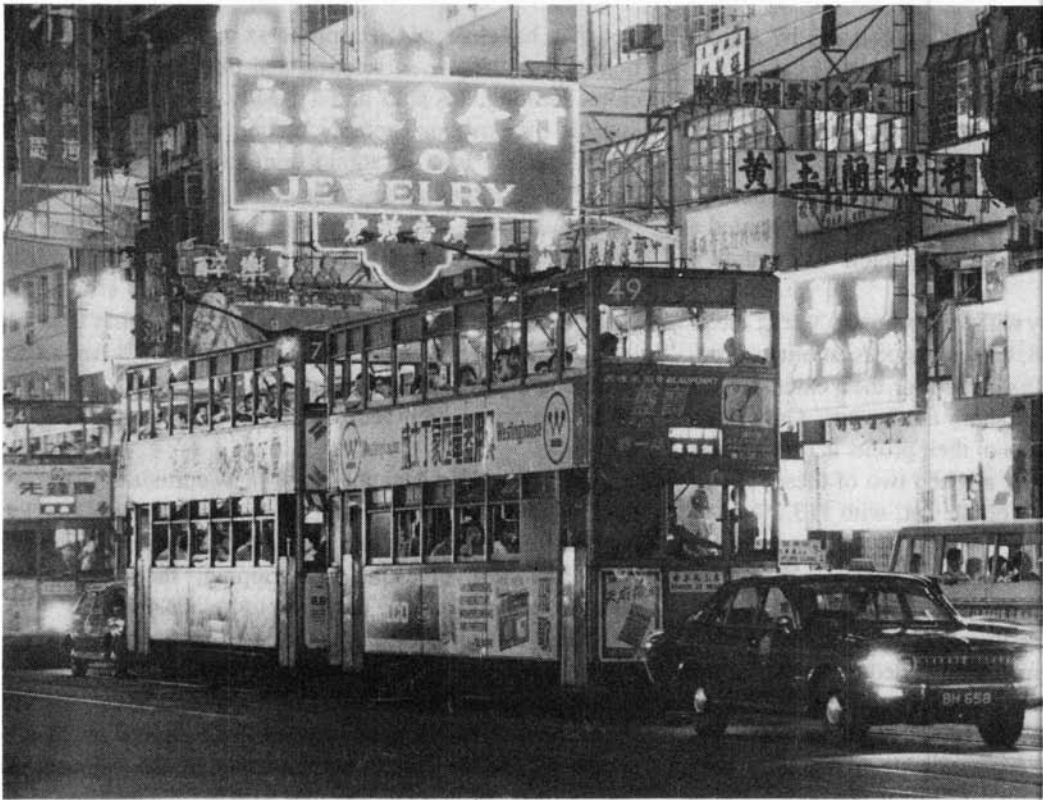
## **Charities for whom?**

In 1991, Member of Parliament Aldred had noted that there were 900 suspicious cases pending on out-of-harbor tax evasion scams. As much as 60% of these, he said, involved "beneficiaries living in Israel."

Eight suspicious charities, led by the United Israel Appeal, had been named in internal tax office memos. Mark Leibler is a board member of the United Israel Appeal and its attorney.

Mark Leibler's client base was described by a June 26, 1987 article in the *Financial Review*: "Arnold Bloch Leibler has traditionally been a firm that serviced the Melbourne Jewish community—the likes of Hooker's George Herscu, Visyboard's Richard Pratt, Entrad's Abe Goldberg, Sussan's Marc Besen, developer and prominent businessman John Gandel, Leon Fink of Hoyts, and the prominent Melbourne Liberman family."

In her testimony to Parliament, Smith pointed to a novel,



*Hong Kong—a known haven of illegal-drug money, where massive amounts of Australian money were moved over a decade in an alleged tax evasion racket through which the name of Australia's prominent Leibler family runs "like a vein through marble."*

*The Merchants of Melbourne*, a fictionalized account of the Melbourne Jewish community in general and the Arnold Bloch Leibler law firm. The author was Alfred Zion, a Melbourne Jew who had had a major falling out with the Leiblers. The book described how the United Israel Appeal was used to evade taxes.

A number of clients of Arnold Bloch and Leibler had been named in the 1982 McCabe-LaFranchi report on the bottom-of-the-harbor tax avoidance schemes, practices which popped up again in new guises. As an internal Tax Office memo noted, "It is difficult to believe that regular distributions of substantial amounts of income each year since 1977 to various charities are all used for charitable purposes. Some of the families involved have a history of participation in tax avoidance schemes (e.g., trust stripping) and as such schemes became illegal they increased their charitable activities."

Certainly, the fortunes of many of Arnold Bloch Leibler's clients took a fortuitous turn in the late 1980s:

Leon Fink, in 1987, was worth \$50 million; in 1990, \$185 million. John Gandel, 1984, \$40 million; 1990, \$350 million. Abraham Goldberg, 1984, \$20 million; 1989, \$250 million. Richard Pratt, 1984, \$70 million; 1990, \$295 million. The Smorgon family, as of 1990, was worth a combined \$700 million. According to a source close to the Tax Office, Leibler reportedly negotiated a deal for the family "worth hundreds of millions." Liberman family, 1984, \$30 million;

1990, \$750 million. Marc Besen, 1983, \$30 million; 1990, \$260 million. In 1991, the Victorian United Israel Appeal had its most successful fundraising drive ever, increasing its 1990 pledges by 25%.

### **Bank-stripping**

Mark Leibler's name also showed up in the \$2 billion blowout of the Tricontinental Bank of Victoria in mid-1989. As the Royal Commission into Tricontinental's collapse noted in its July 30, 1991 report, "A significant amount of total loans is provided to the Jewish community and in loans for property development."

Tricontinental's borrowers looked like a Who's Who of Arnold Bloch Leibler clients, including John Gandel for \$20 million; Gandel's brother-in-law Marc Besen for \$74.8 million; Abe Goldberg for \$62 million; two of the Liberman clan and a partner for \$24.32 million; and George Herscu for \$7.4 million. The real losers, since Tricontinental was a state bank, were the people of the state of Victoria.

The bank's downfall, remarked the *Sun-Herald* of Sept. 7, 1990, was the result of the "aggressive loan policy" of Ian Johns, who became managing director in January 1986 at age 32. Said the *Sun-Herald*, "Trico cultivated 'relationship banking,' first with a group of successful Melbourne businessmen including Solomon Lew, Marc Besen, George Herscu, John Gandel and Abe Goldberg, then with a widening pool of growth-driven businessmen and companies."

Ian Johns was represented after the collapse by Arnold Bloch Leibler.

Melbourne's wealthy Jewish community are not Leibler's only clients. Said the *Financial Review* of June 26, 1987, "Mark's clients at Arnold Bloch Leibler also form a power base—the business and economic base of the country. So much so that a huge blue-chip legal firm . . . wanted a slice of its coveted entrepreneurial clientele and sought a merger early last year."

They are no doubt happy with the tax breaks Mark Leibler works out for them. In 1988, fifteen major Australian corporations were cited by the Tax Office for their extensive tax avoidance through use of offshore tax havens. Only those firms with 20% or \$20 million of their profits in offshore tax havens were counted. Leibler advised two of these, one of which, Elders IXL, was first on the list, with 113.2% of its total profits in tax havens.

### The Keating-Leibler nexus

While Leibler was the undisputed adviser in the "private sector" on tax policy, the man who called the shots for the government was Treasury Secretary Paul Keating. As the *Weekend Australian* of June 13-14, 1992 noted, "Mr. Leibler, a leading taxation lawyer . . . dealt regularly with Mr. Keating when he was treasurer over tax policy and is probably closer to him than any other Jewish leader." In fact, Leibler's power was such that the *Melbourne Age* noted on Sept. 26, 1990, "Some people in the Taxation Office in Melbourne feel that Mr. Leibler's advice is listened to before their own."

Leibler was stung by Smith's charges, but in an August 1990 submission to the Martin committee, he made some rather astounding admissions. Leibler testified that he was "somewhat taken aback" by the contents of articles written by himself, entitled "Practical Applications for the Use of Tax Havens" and "International Transactions in Tax Practice," published in 1976 and 1979, respectively. The articles outlined exactly the kinds of tax avoidance schemes which were "bleeding Australia to death," in Smith's words, and which were now being investigated by the Martin committee!

But, continued Leibler, his attitude had entirely changed from approximately the time the Labor government took power in 1983 and lifted exchange controls. "It is an undeniable fact that the current Commissioner of Taxation, Trevor Boucher, has made a concerted effort to leave behind the confrontationist days of the past and instead to involve tax practitioners and tax collectors together in a cooperative exercise to make the system work."

However, as Smith's probe concluded, the system had not worked; instead, billions had flowed out of the country.

As the *Financial Review* of Nov. 23, 1990 reported, "A determined, carefully calculated effort led by the federal treasurer, Paul Keating, and the tax commissioner, Trevor

Boucher, has changed the terms of tax policy and administration in the 1980s. . . . Keating and Boucher have the real clout. Keating, his staff and Treasury set policy. Boucher and his officers, and notably second commissioner Brian Nolan, set the tone of administration. So who influences them? . . . Leibler is seen to be close to Boucher. But he is not popular with auditors and others lower down the ATO [Australian Tax Office] tree. The reason, probably, is that Leibler is unapologetic in his view that a tax scheme or arrangement, however contrived or artificial, may still be legal. And, he says, in the 1970s and early 1980s he had no hesitation in advising clients on such schemes. . . . Leibler, of all the panel members, is in the greatest position of influence."

The remarkable benefits of this "new attitude of cooperation" were not long in coming. In November 1984, Leibler negotiated a settlement with the Taxation Office which permitted anyone involved in "trust stripping," the sort of scams outlined above, to settle on terms *to their benefit*.

Under the terms Leibler negotiate, the tax rorter would pay no penalty tax, nor any interest accrued on back taxes to that point. In other words, said Leibler, "the taxpayer is therefore receiving an interest-free loan equivalent to the unpaid tax. In the case of some taxpayers, the payment of one lot of taxation only, together with the interest free loan (if appropriately invested) *represents a reduction in the effective tax rate from 60¢ on the dollar to 30¢*" (emphasis added).

In that same year, Boucher set up the taxation liaison group to, as Nolan put it, "cement relations between the tax office and professional bodies." As summarized in a *Melbourne Age* article of 1991, "Minutes of the taxation liaison committee show that some years ago Mr. Leibler had direct input into rulings affecting trust distribution of trust income to beneficiaries living overseas—one of the out-of-the-harbor schemes mentioned by Ms. Smith."

Aside from influencing the national taxation department to the advantage of his clients, Leibler's only other public defense has been to resort to standard methods of the Anti-Defamation League of B'nai B'rith, the U.S. group which defends the drug trade: He labeled Smith an anti-Semite. Recalling her reporting on *Merchants of Melbourne*, Leibler said of Smith: "It is precisely the sort of unsubstantiated and false allegation which is the product of anti-Semitism and is calculated to cause harm to the Jewish people and, more specifically, to the Australian Jewish community. Ms. Smith's analysis has been adversely affected both by her obvious prejudices and by her failure to understand relevant legal principles. . . ."

"Ms. Smith's diatribes directed against non-existent powerful and privileged people who allegedly control governments and cleverly deceive the ATO are totally without foundation, as indeed are Ms. Smith's conscious or unconscious attacks on ethnic minorities."