CHAPTER 10

Defending Dissent

Brian Martin

My first brush with defamation law was in 1980. The biggest environmental issue at the time was nuclear power. I was a member of Friends of the Earth and involved in writing leaflets, organizing rallies, and giving speeches. At the time I worked as a research assistant in applied mathematics at the Australian National University in Canberra. The two most prestigious advocates of nuclear power in Australia at the time were Ernest Titterton, professor of nuclear physics at the Australian National University—just across campus from me—and Philip Baxter, former head of the Australian Atomic Energy Commission. They were active in giving speeches and writing articles and had sway with government.

To show the inconsistencies and absurdities in their positions, I decided to write an analysis of their viewpoints about nuclear power, nuclear weapons, and the nuclear debate. The result was an 80-page booklet that I titled *Nuclear Knights*.[1] Titterton and Baxter had been knighted for their contributions to Australian society—a knighthood is the highest government honor—and were known as Sir Ernest Titterton and Sir Philip Baxter, or Sir Ernest and Sir Philip for short. I thought the whole idea of knighthoods was absurd and was happy to make fun of them through the title.

I found a publisher: Rupert Public Interest Movement. A small lobby and activist group based in Canberra, Rupert was pushing for freedom of information laws; I knew two key members, Kate Pitt and John Wood. They were happy to lend Rupert's name to a challenge to the establishment. John drew some wonderful graphics, including the cover showing Sir Ernest and Sir Philip as Don Quixote and Sancho Panza tilting at windmills.

There was one final barrier to overcome: defamation.

Defamation

Defamation law is designed to deter and penalize unfair comment that damages a person's reputation. If I write a letter to the newspaper saying you are corrupt and nasty, you might well be upset about damage to your reputation—imagine all those people believing you are corrupt and nasty too! Defamation law allows you to sue me—and the newspaper—for damages.

Defamation by publication—a newspaper story or any other written or broadcast form—is called libel. Verbal defamation, for example a comment at a public meeting or a party, is called slander.

Defamation law sounds reasonable in principle but it has a number of serious shortcomings. It costs a lot to go to court. To bring a case might require $10,000, and if there is a vigorous defense then expenses escalate into hundreds of thousands or more. That means protecting your reputation is expensive indeed. Only the rich can afford it.

Even if you win a case for defamation, the main thing you get is usually money. You may or may not obtain a public apology or retraction, and even if you do, it may not restore your reputation.

However, my main concern was the effect on targets of defamation suits—especially me. The effect of defamation law is to inhibit free speech. If Baxter or Titterton sued me or Rupert, the consequences could be disastrous. Legal costs could be stiff, the case could drag on for years, and we might lose and be forced to pay even more.

One of the other shortcomings of defamation law is its incredible complexity. It is possible to lose on a technicality.

My experiences and examples here are Australian, but many of the points apply elsewhere. Defamation laws are found in nearly every country and are based on the same general principles. However, the details of the laws and their implementation can vary quite a bit, so it is valuable to understand the local scene.

For me, the scene was Australia, where the history of defamation law was not pretty, at least from the point of view of free speech. There are lots of cases ending with enormous payouts for what seems like a trivial offense. One case that astounded me involved Alan Roberts, a physicist who I knew through the movement against nuclear power. In 1980, Alan wrote a book review for *The National Times*, a weekly newspaper, of a book by Lennard Bickel, *The Deadly Element: The Men and Women Behind the Story of Uranium*.[2] Bickel was especially upset by Roberts's comment that "I object to the author's lack of moral concern." Bickel sued the publisher. After a trial, an appeal, another trial, another appeal, the two parties reached a settlement. The publishers paid somewhat

less than the amount awarded in the second trial: $180,000.[3] That was in 1980 dollars—it is more like half a million today.

That was one expensive comment to make in a book review. Apparently, according to the law, the cost to Bickel's reputation was greater than the cost of literally losing an arm and a leg, for which compensation under the law would be considerably less.

Alan didn't have to pay anything himself; luckily, the publisher covered his legal costs. But you can imagine the effect on his future writing. And then there is the effect on others who see what happened. This is a prime example of what is called the chilling effect of defamation law on free speech.[4]

My publishers, Rupert Public Interest Movement, were committed to free speech but nonetheless had no desire to open themselves to massive costs in a lawsuit. So they asked me to post the final draft of *Nuclear Knights* to Titterton and Baxter. If the knights threatened to sue, this would be a good signal to be more careful; if they didn't, this would weaken their claims if later they did sue because they hadn't used a timely opportunity to prevent publication. I have used this method repeatedly ever since.

Tittterton and Baxter didn't reply. Safe enough? No, because they might claim they had never received or read the draft. Two key figures in Rupert Public Interest Movement, Kate Pitt and John Wood, assisted. Kate called each of the knights, with John listening in on the telephone line. Kate and John then wrote a statement vouching that the two knights had received the manuscript.

First, Titterton commented that the manuscript was "rubbish." Abuse, but no threat to sue: little danger there. Next, Baxter said he would sue. This was bad news. That meant further checking.

It is OK to say defamatory things as long as you have a legal defense. The most common defense is truth. That can be tough to prove. Not only does every statement have to be true, you have to be able to prove it is true, which often means having some document to back it up. You might have seen your neighbor dumping hazardous chemicals down the drain, but in a court you would be asked, "How did you know he was pouring cyanide?" You might answer, "He was pouring it from a cyanide container, and other cyanide containers were found in his garage." You might then be asked, "Yes, but how do you know he wasn't pouring dirty water from an empty cyanide container?" Every statement with a defamatory imputation had to be checked.

There are some other defenses too. If you have made a statement in a professional capacity—for example, as a teacher making a statement about a student in a report card—you are protected by qualified privilege. A statement made in court or parliament is protected by absolute privilege. If all else failed, perhaps we could have *Nuclear Knights* read out in parliament!

Back to reality: Kate and John knew a barrister in Western Australia who would read the manuscript yet again. He suggested a few small changes. Then it was off to the printers.

Baxter didn't sue. Probably he never intended to. His threat was a bluff. This happens all the time and can be remarkably effective in deterring publication. People are afraid of being sued. Defamation law does indeed have a chilling effect.

In *Nuclear Knights*, I included a list of prominent advocates of nuclear power in Australia. One of them was Don Higson. He worked for the Australian Atomic Energy Commission and wrote pronuclear letters to newspapers. After *Nuclear Knights* was published, he wrote to me fairly amicably to discuss our differences—amicably except for one thing: he claimed he wasn't an advocate of nuclear power but instead was just presenting the facts. I thought this was absurd but persisted with the correspondence until Higson suggested he might sue because of this alleged misrepresentation.

A couple of years later, I continued with my critiques of pronuclear experts by writing an article about Leslie Kemeny, a nuclear engineering academic at the University of New South Wales. After my article, "The Naked Experts," appeared in the British magazine *The Ecologist*,[5] Kemeny wrote several people threatening to sue: me, the editor of *The Ecologist*, and two friends of mine who had commented on a draft of the article and who I listed in the acknowledgments. Kemeny even drafted an apology letter for us that made all sorts of sweeping rejections of our views. This didn't seem a very credible threat; for example, it didn't come via lawyers. Nevertheless, the editor of *The Ecologist* was sufficiently alarmed to ask me to send copies of all the material about Kemeny I had relied on in writing the article. Kemeny never sued.

These experiences sensitized me to defamation threats, both to me and to others. I sought out what I could find to learn about the practical aspects of defamation, such as how to write in ways that reduced the risk of defamation actions. A general rule was to present just the facts and let the reader draw conclusions. For example, instead of saying "Jackson Bragidan is a liar," it is safer to say, "Jackson Bragidan said he has a Harvard PhD; Harvard does not record any PhD graduate with his name."

I came across more and more cases in which defamation threats and actions were used to suppress free speech. When individuals asked me to advise them about defamation threats, I knew enough to say something helpful. These experiences helped me learn more.

Whistleblowers

In 1991, a group called Whistleblowers Australia was formed. I knew about it from the beginning through correspondence with the founder John McNicol. In 1993 I joined the national committee of the organization. At that time the president was Jean Lennane, a psychiatrist who had worked for a government hospital, spoken out about cuts to health services, and been dismissed. The secretary, Lesley Pinson, had been a whistleblower in the railways and lost her job. The treasurer, Vince Neary, an engineer, was also a railways whistleblower.

In fact, most members of Whistleblowers Australia were whistleblowers. Hearing their stories, I learned an enormous amount about the dangers of speaking out and about the predictable patterns of attacks on whistleblowers. The same methods and outcomes were found in government departments, schools, churches, police departments, and private companies.

Typical whistleblowers are conscientious employees who see something wrong—corruption, abuse, hazards to workers or the environment—and report it to their bosses or others up the chain of command. Instead of the problem being investigated, they come under attack themselves. This is often a total shock to their self-understanding: their sense of how the world works is undermined, causing bewilderment and self-doubt.[6]

Most whistleblowers are ostracized—this cold-shoulder treatment seems almost universal and very hard to handle. They are subject to petty harassment. Rumors are spread about them. The serious reprisals include reprimands, demotions, referral to psychiatrists, punitive transfers, dismissal, and blacklisting. As well as losing jobs and sometimes having their entire career derailed, with drastic financial consequences, whistleblowers also suffer terribly in their personal lives, with ill health and damage to relationships commonly reported.

Whistleblowers speak out because they believe the system—or some part of it—works. In fact, a lot of them didn't think of themselves as whistleblowers at all. They were just doing their jobs, reporting a problem to the boss—a financial discrepancy, a hazard at work—and suddenly found they had become the target.

When whistleblowers understand what is happening, they often seek justice by going to higher authorities, for example reporting the problem to their boss's boss or the chief executive officer or making a formal complaint to a grievance body internal to the organization or going outside to an ombudsman, auditor-general, professional body, anticorruption agency, court, politician, or some other official body. The trouble is that this hardly ever works.

Vince Neary, the railways whistleblower, went to his boss, the chief executive officer, the auditor-general, the ombudsman, his local member of parliament, and the Independent Commission Against Corruption, among others.

None gave much satisfaction in addressing his concerns, namely unsafe signaling processes and unaccounted expenses—and the higher up he reported the problem, the worse the reprisals: he was ignored, ostracized, reprimanded, demoted, and eventually dismissed.

Bill De Maria carried out a large survey of Australian whistleblowers; they reported being helped in less than one out of ten approaches to official bodies and sometimes they were worse off.[7] What is going on? Essentially a whistleblower is a single person who is speaking truth to power. If every worker who spoke out about abuses at work—payoffs, special deals, unsafe operations, bullying, hiring of cronies—was vindicated, the entire system would come under threat. There are way too many dodgy operations for any agency to vindicate more than a tiny minority of complaints. Energetic official bodies are typically starved of funds, burdened with onerous bureaucratic reporting duties or—if they start tackling corruption too high in the system—have their powers taken away.

Jean Lennane, Whistleblowers Australia's first president, said that only two things reliably aided whistleblowers: meeting other whistleblowers, which helped them stop blaming themselves and realize why they were being attacked, and media coverage.

Yes, media. Of course the media are themselves subject to defamation threats and actions. Indeed, they are juicy targets because they have so much money. Quite a few Australian politicians have built holiday homes with payouts obtained after suing the media for some derogatory comment. Some, it is said, have paid staff members to scour the media looking for pretexts to sue.

This use of defamation law is one of the reasons why Australian media are so cautious about breaking stories. From 1965 to 1975, Robert Askin was premier of New South Wales, Australia's most populous state. He was officially lauded, indeed awarded a knighthood. Yet Askin was widely known in media circles as being corrupt, receiving brown paper bags filled with cash to allow gambling and prostitution to thrive. But there were no news stories about this during his time in office. Shortly after Askin died, *The National Times* ran a front-page story titled, "Askin: Friend to Organised Crime."[8] Australian defamation laws do not allow the dead to sue.

So Australian media are quite cautious about what they publish. Nevertheless, they are receptive to whistleblower stories, which often score high on news values: personalities and powerful organizations are involved and the tale of a courageous employee being victimized resonates with audiences.

Good journalists will present both sides to a whistleblower story, but the impact is usually very damaging to the organization. For this reason, organizational elites do whatever they can to limit media coverage. They encourage

whistleblowers to use official channels, and they offer generous settlements with legal conditions that no further public comment be made.

In the stories from whistleblowers, I noticed another recurring theme: defamation threats. Whistleblowers seek to speak out in the public interest. What better way to shut them up than to threaten to sue them? That led me to say that if Australian governments were really serious about assisting whistleblowers, they would reform defamation laws and get rid of laws preventing government employees from speaking out about anything to do with their jobs. Instead, governments are quick to pass whistleblowing laws that don't work.

Law reform commissions in Australia have been recommending changes to defamation laws for decades, but governments have repeatedly ignored them. I realized that defamation law reform was not a productive way to help whistleblowers, at least not in the short term. So what is? My answer is knowledge and skills.

Jean Lennane urged me to take over from her as president of Whistleblowers Australia, and in 1996 I did. Defamation was high on my priority list and now I felt more commitment to a constituency, the two hundred or so members of the organization plus numerous others who contacted us each year. I decided to write a leaflet on defamation.

It was a hefty leaflet: eight large pages with plenty of text. I included a description of what defamation law is, listed the problems with it along with examples—such as the Alan Roberts case—and described some responses.

I then went to considerable lengths to get everything in the leaflet exactly right. To make a single mistake in describing the law would undermine the leaflet's credibility. I sent drafts to lots of people, including whistleblowers—the sort of people the leaflet was aimed at—and legal experts. Judith Gibson, a barrister specializing in defamation who also edited the magazine *Defamed*, was very helpful; her check of the legal details gave me confidence.

Having produced the leaflet, titled "Defamation Law and Free Speech," I circulated it to anyone who might be interested, such as whistleblowers who contacted me for assistance. As president of Whistleblowers Australia, suddenly lots of people wanted to talk to me. I had thought I had a good grasp of the issues before, but soon I was overwhelmed with case after case.

The Web: Defamation Havens

This was the time when the World Wide Web burst on the scene, with a rapidly expanding audience. I obtained a manual, learned how to write in HTML (the standard web language), obtained software to convert word-processed documents to HTML, and set up a website. One of the first things I put on my

site was the defamation leaflet.[9] Years later, I discovered that it had become the most-read item on my site, out of hundreds of articles.

On my website I included a section called "Suppression of Dissent."[10] Well, it was more than a section, closer to half the site, filled with all sorts of documents about dissent, whistleblowing, analysis, and responses. Before the web, people who wanted to publicize their case had to rely on the media—which often were not interested or only covered it briefly—or they had to laboriously send out copies of documents by post. And that is exactly what people did. The web made direct distribution far easier.

In 1997, I was contacted by Dudley Pinnock, an entomologist at the University of Adelaide. Although he was a senior academic who was bringing in lots of money through research grants, he had been declared redundant. Furthermore, he alleged that senior figures in his department were inappropriately accessing his research funds.

I advised him that official channels were unlikely to help him retain his job, but he preferred to follow the advice of the academics' union and go through an appeal process. It was unsuccessful. At that point Pinnock authorized me to put an account of his story on my website. It was basically the chronology he had used for his appeal.

Having posted the Pinnock file, I alerted a couple of higher education journalists and within a matter of days I was instructed by University of Wollongong management to remove the file from my site. Why? One of the journalists had contacted the University of Adelaide for a comment about the Pinnock file. Finding out about the file, Mary O'Kane, vice-chancellor of the University of Adelaide—equivalent to president of an American university—telephoned Gerard Sutton, vice-chancellor of my university, threatening defamation actions unless the file was removed.

From my perspective, this would have been a great opportunity to take a stand for free speech. Imagine the publicity: "University of Adelaide threatens to sue to restrict free speech!" But no, instead the University of Wollongong management took a cautious route, minimizing risk by acquiescing rather than resisting.

At this point, I could have taken a stand and refused to remove the file. This might have resulted in disciplinary action or, more likely, simply an administrative takeover of my site and forced removal of the file. This could have been newsworthy in its own right, but my concern was with the Pinnock case, not making a scene at Wollongong. So I removed the Pinnock file, replacing it with a statement that it had been removed due to a defamation threat.

Next I contacted a friend in Electronic Frontiers Australia—an Internet freedom lobby and activist group—and asked for assistance in posting the Pinnock file on other sites. Before long, four different sites posted it. I made links to each

of these sites. Mary O'Kane's attempted censorship was thwarted. Even better, the Pinnock file received additional publicity through this enterprise.

The Pinnock experience led me to the idea of "defamation havens," analogous to tax havens.[11] A tax haven is a country with low taxes; running some operations there allows tax in the home country to be reduced. A defamation haven could be a country where there is no law against defamation, or laws that are less draconian than the home country. To get around the risk of defamation, just post a document on a website in the haven country.

For example, if Australian Internet service providers (ISPs) are threatened with defamation actions over a document, then use an American ISP, because US defamation laws do more to protect free speech and anyway, it is a lot of extra expense for an Australian to launch a legal action in the United States. Of course, the ISP is only one target: anyone involved in disseminating defamatory material can be sued—most obviously the author. But the author in such cases is not the target—Pinnock was not threatened with a defamation suit—because the purpose is censorship.

Defamation havens can be physical places, namely countries with low penalties for defamation, but in practice the most important haven is virtual: by putting a document on several websites, it becomes nearly impossible to eradicate. The University of Adelaide approached the ISPs hosting a couple of the copies of the Pinnock file, but to no avail: the ISPs didn't take the threats seriously. Even if they had acquiesced and removed the file, the next step was straightforward: find yet more sites to host the file, generating ever more publicity along the way. The Internet in this way becomes a censor's nightmare: every attempt to squash undesirable information only spreads it further.

With these experiences, I now have a fairly standard approach when proposing to publish potentially defamatory material. The first step is to apply my own understanding of what is defamatory and see whether statements can be defended. The most important part of this is to state facts and be careful in expressing judgments.

The next step is to consider sending the material to the person potentially defamed—just as Rupert and I did decades ago with Titterton and Baxter. This is a good way to flush out risk.

Then I post the material on my website and wait. If there is no response, then it is fine and good. If someone threatens to sue, I can either remove it, modify it, or send it to others for posting.

Michael Wynne is a retired medical academic who collects material about corruption and abuse by corporate medicine, especially hospital corporations and especially ones in the United States. He has produced a vast amount of material, much of it taken from media reports. I host his files on my suppression-of-dissent website.[12]

Four different health care companies have threatened to sue for defamation because of Michael's material. Do they contact Michael first? No. Do they contact me as the site manager? No. They instruct lawyers who send a letter of demand direct to the University of Wollongong administration, which runs the website. This is a typical sign of an attempt at suppression of dissent: no negotiation, just threats to one's superiors. The university's managers then ask me to remove the offending webpage.

The sequence is becoming routine. I remove the webpage, replacing it with a statement that it has been removed because of a defamation threat. I inform Michael and he prepares a modified page, omitting what seems to be opinion and relying more on quotes from media stories. Sometimes he ends up with a lot more material. I then write to the health care company lawyers asking for an opinion on the revised page. If the lawyers respond with a letter with continued complaints about the content but no threat to sue, this means it is safe to post the revised page. If there is no response at all, I wait a few months and put up the new page.

In one case after I sent Michael's modified page to a company's lawyers, the company head wrote a letter to the chancellor of the university—a ceremonial position—making accusations about my status as an academic for having such material on my website. This was a sign that a legal action wasn't feasible. Luckily, the administration is concerned mainly about possible costs and is able to stand up to abuse.

Backfire

In 2001 I came up with the idea of backfire and tactics against injustice. Gene Sharp, the world's leading researcher into nonviolent action, developed the idea of political jiujitsu: if peaceful protesters are brutally assaulted, lots of people will see this as terrible and turn against the attackers.[13] This occurred in Russia in 1905, when hundreds of people, protesting to the czar, were slaughtered by government troops. The result was a dramatic loss of support for the czar, undermining the credibility of the entire system and laying the foundation for the 1917 revolution. In 1960, white South African police opened fire on peaceful black protesters in Sharpeville, killing perhaps one hundred of them. News of the massacre punctured the South African government's reputation, at that time, as a legitimate democracy. Sharp also had examples from Gandhi's campaigns in India, especially the 1930 salt march, during which police beatings of nonviolent protesters undermined the credibility of British rule over India. I knew of a later example, the shooting of peaceful protesters in Dili, East Timor, by Indonesian troops. Photos and video of the massacre catalyzed the international movement for East Timor's independence. In cases like this, the violent

assaults rebounded against the attackers, analogous to the sport of jiujitsu in which the attacker's energy and momentum can be used against them—hence Sharp's expression "political jiujitsu."

In every one of these examples, a key to the process was communication: people had to find out about the atrocity. For example, there had been other massacres in East Timor but because there were no Western journalists present, no photos, and no videos, news leaked out slowly and had little impact because of Indonesian government denials and censorship.

My brainwave went like this: just like massacres in East Timor, lots of terrible things happen in the world, but only a very few of them generate outrage. So what about all the rest? Perhaps the attacker is doing something to reduce outrage. I eventually came up with five main methods: (1) cover-up, (2) devaluation of the target, (3) reinterpretation of the events, (4) official channels that give an appearance of justice, and (5) intimidation and bribery.

How to apply this model of tactics? It would help to have lots of case material, so I thought of collaborating, finding someone who knew a lot about an area involving an injustice and who was interested in the theory and practice of challenging this injustice.

I thought of Steve Wright, one of the world's leading researchers on technology used for repression—for example, the manufacture and trade in shackles, thumb screws, electroshock batons and many other horrible tools used in torture and control. I had met Steve just once, in Manchester in 1990, but had kept in regular touch. Steve was receptive to my approach and before long we had completed an article titled "Countershock: Mobilizing Resistance to Electroshock Weapons."[14]

I also thought of Sue Curry Jansen, whose book *Censorship: The Knot that Binds Power and Knowledge* I had read and with whom I had exchanged a couple of letters over a decade earlier.[15] Sue was also interested in collaborating and we soon produced a paper, "Making Censorship Backfire."[16] I met Sue for the first time after we had finished the paper.

One of our censorship case studies was the so-called McLibel case, in which McDonald's sued two London anarchists, Helen Steel and Dave Morris, who had helped produce a leaflet titled "What's Wrong with McDonald's?" The legal action ended up being the longest court case in British history and was a public relations disaster for McDonald's, triggering a massive grassroots campaign in defense of Steel and Morris and disseminating the offending leaflet to millions of people. Sue and I treated this as a case of censorship backfire: the attempt by McDonald's to censor the leaflet using a legal action was seen as unfair and ended up being counterproductive for McDonald's even though the corporation used all the five methods for inhibiting outrage.

The McLibel case can also be seen as a defamation backfire because McDonald's sued on the grounds of defamation. Later I collaborated with Truda Gray on studies of defamation backfire, using the McLibel case and several others to illustrate the tactics typically used by those who sued and what tactics in response were most likely to deter actions or make them counterproductive.[17]

So what should you do if you are threatened with a defamation suit? My advice goes along these lines: don't panic—don't be intimidated. Consider your options. Sometimes it is best to make an apology or to withdraw your statement and, like Michael Wynne with his health care documents, prepare a stronger, more documented version. Other times you may want to make a stand, like Helen Steel and Dave Morris. If so, don't rely on the courts for defense; instead, go public. Let people know about the defamation threat and about the important issue that is threatened with silencing.

For most people, defamation actions are frightening. The backfire model offers a different perspective: being attacked is an opportunity to generate greater attention to your concerns. You may or may not want to take up the opportunity, but it is there.

Conclusion

If you do decide to resist, and publicize your efforts, you can help others through your example. The McLibel campaign sent a powerful message to large corporations: sue at the risk of extreme damage to your reputations. That is indeed a powerful message considering that defending reputation is what suing is supposed to achieve.

My attention from the beginning was on the use of defamation law as a form of censorship, as spelled out in the leaflet "Defamation Law and Free Speech." The visibility of the leaflet on the web has generated a continuing stream of correspondence, much of it from people asking what to do. Roughly two-thirds are about dealing with defamation attacks, anything from an ex-husband threatening legal action over comments made to a friend to someone wanting to set up a website about bad debts asking about avoiding suits.

But then, unexpectedly, there is the other one-third: people who have been defamed asking me what to do about it. One woman was disturbed by hostile rumors being spread around her neighborhood; another had her business disparaged on television and wanted to respond. So regular were the requests that I wrote a little article, using the backfire model but in the opposite direction, looking at the tactics of defamers and how to counter them.[18]

I usually spell out a series of options rather than giving a specific recommendation. One option is to just ignore the slurs, as most people will forget about them and challenging them will simply make people remember. Another option is to make a prompt, succinct, factual, and nonemotional response. This is easiest on the Internet; it is easy to send a quick reply on an email list.

Then there is the option of suing. That is usually why people who have been defamed contact me. Some of them ask me to recommend a lawyer. I always say this is probably the worst option. Suing is very expensive, not guaranteed to win, slow, and procedural. And it won't help your reputation. In fact, it might make the damage to your reputation far worse—especially if the other side knows how to make defamation actions backfire.

Notes

1. Brian Martin, *Nuclear Knights* (Canberra, Australia: Rupert Public Interest Movement, 1980).
2. Lennard Bickel, *The Deadly Element: The Story of Uranium* (New York: Stein and Day, 1979).
3. David Bowman, "The Story of a Review and its $180,000 Consequence," *Australian Society* 2, no. 6 (1983): 28–30.
4. Eric Barendt, Laurence Lustgarten, Kenneth Norrie, and Hugh Stephenson, *Libel and the Media: The Chilling Effect* (Oxford: Clarendon Press, 1997).
5. Brian Martin, "The Naked Experts," *The Ecologist*, July/August 1982, 149–57.
6. C. Fred Alford, *Whistleblowers: Broken Lives and Organizational Power* (Ithaca, NY: Cornell University Press, 2001).
7. William De Maria, *Deadly Disclosures: Whistleblowing and the Ethical Meltdown of Australia* (Adelaide: Wakefield Press, 1999).
8. David Hickie, "Askin: Friend to Organised Crime," *National Times*, September 13–19, 1981, 1, 8.
9. Brian Martin, "Defamation Law and Free Speech," 1996, http://www.bmartin.cc/dissent/documents/defamation.html.
10. Brian Martin, ed., "Suppression of Dissent," accessed March 8, 2011, http://www.bmartin.cc/dissent.
11. Brian Martin, "Defamation Havens," *First Monday: Peer-Reviewed Journal on the Internet* 5, no. 3 (2000), accessed March 8, 2011, http://firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/734/643.
12. Michael Wynne, "Corporate Healthcare Web Site," accessed March 8, 2011, http://www.bmartin.cc/dissent/documents/health.
13. Gene Sharp, *The Politics of Nonviolent Action* (Boston: Porter Sargent, 1973), 657–703.
14. Brian Martin and Steve Wright, "Countershock: Mobilizing Resistance to Electroshock Weapons," *Medicine, Conflict and Survival* 19, no. 3 (2003): 205–22.
15. Sue Curry Jansen, *Censorship: The Knot that Binds Power and Knowledge* (New York: Oxford University Press, 1988).
16. Sue Curry Jansen and Brian Martin, "Making Censorship Backfire," *Counterpoise* 7, no. 3 (2003): 5–15.

17. Truda Gray and Brian Martin, "Defamation and the Art of Backfire," *Deakin Law Review* 11, no. 2 (2006): 115–36; Brian Martin and Truda Gray, "How to Make Defamation Threats and Actions Backfire," *Australian Journalism Review* 27, no. 1 (2005): 157–66.
18. Brian Martin, "What to Do When You've Been Defamed," *The Whistle*, newsletter of Whistleblowers Australia, no. 45, February 2006, 11–12.

CHAPTER 11

Software Freedom as Social Justice

The Open Source Software Movement and Information Control

John L. Sullivan

The Internet Age has brought with it unprecedented access to textual, audio, and audiovisual information via networked computers. While computer software manufacturers and traditional media corporations profited tremendously from these new technologies, they almost immediately began forms of legal pushback against rearguard actions by consumers who attempted to expand the availability of information in ways that threatened copyright and other forms of intellectual property. The initial rise of distribution software such as Napster and Gnutella in the late 1990s, for instance, allowed consumers to freely distribute copyrighted music and posed a major threat to the recorded music industry before these sites were ultimately disbanded or transformed into legitimate music sellers as a result of court action. These early battles between computer or audiovisual media companies and consumers were symptomatic of the challenges to traditional notions of intellectual property in an era of digitalization and media convergence.

In the shadow of these high-profile battles over information distribution via computer networks, a small group of dedicated computer programmers and technology enthusiasts have been bypassing the limitations of proprietary information systems by rewriting those systems to fit their own needs. Beneath the radar of the mainstream media, in the pages of technology-oriented periodicals, online blogs, and Internet chat rooms, a group of libertarian-minded programmers have joined a debate about how to short-circuit the rising tide of closed, proprietary computer code that administers the functions of computers and their interactions in cyberspace.[1] The free, open source software (FOSS) movement has countered the market dominance of corporations like Microsoft and Apple by developing and encouraging the distribution of alternatives to these

LIST OF PREVIOUS PUBLICATIONS

Sue Curry Jansen

Censorship: The Knot That Binds Power and Knowledge, 1988.

Critical Communication Theory: New Media, Science, Technology, and Gender, 2002.

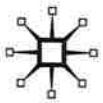
Jefferson Pooley

Park, David W., and Jefferson Pooley, eds. *The History of Media and Communication Research: Contested Memories*, 2008.

Media and Social Justice

Edited by
Sue Curry Jansen, Jefferson Pooley, and Lora Taub-Pervizpour

palgrave
macmillan



Chapter 3 is a lightly revised version of a chapter in *Inclusion Through Media*, ed. Tony Dowmunt, Mark Dunford, and Nicole van Hemert (London: Goldsmiths, 2007). Reprinted by permission of Goldsmiths College, University of London.

Chapter 4 is a revised excerpt from *Public Media 2.0: Dynamic, Engaged Publics* (Washington, DC: Center for Social Media, 2009). Reprinted by permission of the Center for Social Media, American University.

Chapter 5 is a combined and expanded version of two articles: William Gamson, "Life on the Interface," *Social Problems* 51, no. 1 (2004): 106–10; and Charlotte Ryan, "Can We be Compañeros?" *Social Problems* 51, no. 1 (2004): 110–13. Reprinted by permission of the University of California Press.

First published in 2011 by PALGRAVE MACMILLAN® in the United States—a division of St. Martin's Press LLC, 175 Fifth Avenue, New York, NY 10010.

Where this book is distributed in the UK, Europe and the rest of the world, this is by Palgrave Macmillan, a division of Macmillan Publishers Limited, registered in England, company number 785998, of Houndmills, Basingstoke, Hampshire RG21 6XS.

Palgrave Macmillan is the global academic imprint of the above companies and has companies and representatives throughout the world.

Palgrave® and Macmillan® are registered trademarks in the United States, the United Kingdom, Europe and other countries.

ISBN: 978-0-230-10863-9

Library of Congress Cataloging-in-Publication Data

Media and social justice / edited by Sue Curry Jansen, Jefferson Pooley, and Lora Taub-Pervizpour.
p. cm.
ISBN 978-0-230-10863-9 (hardback)
1. Mass media--Political aspects. 2. Social justice. I. Jansen, Sue Curry. II. Pooley, Jefferson. III. Taub-Pervizpour, Lora, 1967–

P95.8.M386 2011
302.23—dc22 2011002901

A catalogue record of the book is available from the British Library.

Design by Scribe Inc.

First edition: July 2011

10 9 8 7 6 5 4 3 2 1

Printed in the United States of America.

For James D. Schneider (1939–2005)

Contents

INTRODUCTION

Media, Democracy, Human Rights, and Social Justice

Sue Curry Jansen

Media activism and critical media studies have always addressed social justice issues. Activists work to redress perceived inequities in media access, policies, and representations, while critical media scholars combine teaching, research, and publication with advocacy for democratic media, institutions, and representational practices.

Because most channels for public communication in democratic societies are now dominated by messages produced by commercial media, advertising, and public relations, media activism and critical media studies seek to expand the range and diversity of information, interpretive strategies, and resources available to the public. For example, critical media studies challenge government and market censorship of media and culture; oppose concentrated ownership of media; challenge representational practices that stereotype, marginalize, or "symbolically annihilate" minority views, cultures, groups, or individuals;[1] proactively promote broad access to media resources and media-making skills; encourage development and wide distribution of alternative media; document, publicize, and urge action to counter domestic and global digital divides; use media technologies to expose abuses of power; and develop and promote policy positions to advance social justice.

Critical media researchers pioneered efforts to document and challenge the roles media play in facilitating and rationalizing global inequalities in the distribution of power relations and resources. Many critical media scholars were, for example, advocates of the New World Information Order: the movement, sponsored by the nonaligned nations in the United Nations in the 1970s and early 1980s that promoted a more equitable distribution of global information resources.[2] Some media scholars advocate for recognition of "the right to communicate" as a fundamental human right.[3] Critical media scholarship and