

We must exercise our right to speak out

Free speech did not shine
in the year just gone, as
BRIAN MARTIN
illustrates with some
controversial cases

FREE speech is praised in theory but often attacked in practice. In this regard, 1996 was no different from usual.

The year got off to an exciting start with the federal election campaign. A few years ago all the major parties passed an amendment to the Commonwealth Electoral Act making it illegal to encourage people to vote informal or in any other way not specified by the Act. Maximum penalty: imprisonment for six months. Although it is quite legal to actually vote informal, it is now a crime to advocate doing so.

Albert Langer became the first victim of this new law, being sent to prison for contempt of court by continuing to advocate not giving preferences to the major parties. In the process he became a political martyr. It is not so well known that there were many others who also advocated informal or other nonstandard voting, but were not prosecuted.

During the election campaign, Mick Skrijel decided to speak freely about some of his experiences. Skrijel was a fisherman in South Australia when in the 1970s he spoke out about heroin drops off the coast and protection of the drug trade by police and politicians.

Afterwards, his business was boycotted, his boat was burned, he was assaulted and his family was terrorised. Later he was convicted on drugs and explosives charges and sent to prison. He was freed on appeal with all convictions quashed.

In 1993, the federal minister for justice, Duncan Kerr, appointed David Quick QC, to review the case. Quick concluded that some evidence against Skrijel had been fabricated and recommended a royal commission into the affair. But Kerr decided against this.

Skrijel prepared a leaflet with information about his case. Kerr sent a letter to Tasmanian media outlets saying that he would sue them if false and defamatory material in the leaflet were repeated in the media. Skrijel prepared a revised leaflet called "Crime, Justice and Mr Kerr" and during last year's federal election campaign went around Kerr's electorate in Hobart putting it into letterboxes. Members of the Australian Federal Police visited an ABC journalist in Hobart, who had cancelled an interview with Skrijel, in the hope that she would help them find him. By now Skrijel is quite used to coming under attack when he speaks out.



Defamation law continues to be a highly effective restraint on free speech. Some threats to sue for defamation are just bluffs, but they often work because of the cost and hassle of defending a court action, even when the defence is successful. The University of Western Australia tried an original and spectacular bluff. It concerned a long-running dispute concerning David Rindos, an archaeologist who was denied tenure at the university in 1993. A supporter of Rindos set up a site on the World Wide Web with numerous documents about the case. After the address of this Web site was mentioned on radio and in the press, UWA threatened to sue because the site itself allegedly contained defamatory material. This is roughly equivalent to suing somebody because they men-

tion the title of a book that allegedly contains defamatory material. UWA never followed through with its threats, but it scared some media outlets from repeating the Web address.

Avon Lovell knows a lot about defamation cases. In 1985 he published a book called *The Mickelberg Stitch*, which pointed out weaknesses in the case against the Mickelberg brothers, who were convicted of swindling gold bullion from the Perth Mint. The book sold well until police sued for defamation. The Police Union introduced a levy to fund dozens of legal actions against Lovell, the distributor and booksellers. Lovell appeared in court hundreds of times but not a single action reached trial in 10 years, effectively banning the book. Finally this year Lovell

reached a settlement with the Police Union, so now the book can be sold openly.

Whistleblowers are those who speak out in the public interest, typically about corruption or dangers to the public or environment. They frequently come under attack, being ostracised, harassed, reprimanded, transferred, referred to psychiatrists, demoted and dismissed.

Whistleblowers sometimes receive mixed messages from the powers that be. In the Department of Foreign Affairs and Trade, allegations about paedophilia received increasing attention this year. Foreign Minister Alexander Downer called for anyone with information to come forward and that no officer should be afraid to blow the whistle. At the same time, Downer did not intervene as DFAT took disciplinary action against employee Alastair Gaisford, a whistleblower on paedophilia in the service. Furthermore, Federal Police raided Gaisford's home at the behest of DFAT. Gaisford's experiences provide a stronger signal to other potential whistleblowers than Downer's words.

ONE of Australia's most energetic and courageous whistleblowers is Ray Hoser, whose book *The Hoser Files* makes allegations about corrupt behaviour in VicRoads and the Victorian police and judiciary. Hoser's original expertise is with wildlife. In his book *Smuggled* he alleges that members of the NSW National Parks and Wildlife Service were responsible for much of the illegal trade in endangered species. Last year he provided explosive new material about the service in a new book, *Smuggled 2*. Although Hoser successfully defended an action to ban the book, he faces defamation proceedings. His Internet provider, presumably after being threatened with similar proceedings, cut his access to electronic mail and shut down his sites on the World Wide Web.

The gagging of free speech and the suppression of dissidents goes on all the time, frequently with the object of protecting individual reputations against unwarranted attacks. A few cases receive widespread attention, but most are less spectacular. There are battles in every organisation in which employees are warned, censored, harassed and sacked. Numerous speakers and writers routinely engage in self-censorship.

Free speech will always be a threat to those in positions of power, some of whom will use whatever means possible to squash it. Free speech cannot be protected by laws alone. It requires people to continually exercise it.

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