

Mitchell's Defamation Threat: More Bad News

Clive Hamilton

Some news organisations take the view that their access to a wide audience gives them the capacity to defend themselves against their critics so that they should never need to resort to the defamation laws. Over the years the *Australian* has made a number of strong statements to this effect, including the following editorial from 2004:

“The defamation law as it stands has done grave damage to public culture in Australia ... The whole legalistic approach ignores a fundamental truth: freedom of speech and a vigorous and open marketplace of ideas are essential to a democratic society ... In fact, reputation is something established in the marketplace of ideas...”

Yesterday the *Australian* launched legal action against the ABC aimed at forcing it to take down an [opinion piece](#) on its comment site The Drum by Professor Robert Manne.

In a pre-emptive strike, Manne was responding to inquiries from a journalist at the *Australian* after the newspaper had used freedom of information laws to obtain documents from the Australian Research Council about grants to him.

Last year Manne wrote a *Quarterly Essay* sharply critical of the *Australian's* political bias, so he distrusted the paper's motives and indicated that he believed the investigation of his personal affairs was payback. He wrote that it is “time for fellow democrats in Australia to stand up to the bullying tactics of the Murdoch press”.

The newspaper's editor-in-chief Chris Mitchell, who has [previously said](#) he would “never sue”, [told Crikey](#) yesterday that Manne's article is “an extraordinarily defamatory piece”. He said that he had known nothing of the FoI request or the story that was being prepared.

There are a number of aspects of this unfolding story that ring alarm bells across Australian campuses. The foremost is the fact that a powerful media organisation has launched legal action aimed at silencing one of its critics. Whatever the merits of the claims and counter-claims in this case, legal threats inevitably have a chilling effect on public debate.

Academics across the nation—especially young ones, those with insecure tenure and those who have never needed to grow a thick hide—will be frightened by the possibility that they may attract the same kind of attention if they are critical of powerful interests.

When intellectuals engage in self-censorship for fear of offending the powerful our democracy is diminished. One or two high-profile cases such as this one involving Robert Manne and the *Australian* are enough to undo years of effort to encourage academics to use their expertise to better inform public debate, efforts epitomised by this outlet, The Conversation.

The second aspect of this case that must cause concern on campuses is the innovative use of FoI laws to gain access to ARC documents. It should be stressed that, as the ARC dispenses

public funds, there is no reason why any member of the public should not have access to all documents relating to applications, assessments, funding decisions and evaluations.

The ARC has stringent procedures to ensure not only that grants are made on merit but that funds are spent as defined in grant proposals and adhere to strong principles of prudence and accountability.

So the question must be asked: Why did the *Australian* pick out Professor Manne as the target of an FoI request? The paper has claimed it has not sought documents concerning other academics. Mitchell [has said](#) that his newspaper was acting on a tip-off from another academic who suggested that Manne may not have fulfilled his obligations to the ARC. Why, it must be asked, would an academic take such a serious allegation to a newspaper known to be hostile to Manne rather than to the ARC?

The third concern is that, following its successful FoI request, the *Australian* asked Manne to answer a series of questions about payments he may have received for publications such as his *Quarterly Essays* or royalties from books.

Given past hostility from the paper, the line of questioning indicated to Manne that the newspaper will make out that he has somehow received money unethically, despite the fact that universities and the ARC are relaxed about academics being paid for their publications, including returns from the Copyright Agency Limited.

In writing his *Quarterly Essay* critical of the *Australian*, and now his pre-emptive opinion piece, Robert Manne has decided to ignore Mark Twain's advice never to argue with a man who buys ink by the barrel. Although he can only dream of buying barrels, as Australia's leading public intellectual Manne has an inkpot deeper than most.

He also has the hide of a rhino. Yet if he and the handful of other public intellectuals willing to challenge powerful interests are driven from the public domain by legal threats or personal attacks then democracy in this country will be severely weakened.

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