14. ‘Smoking Guns’: Reflections on Truth and Politics in the University

Judith Bessant

Introduction

This chapter offers an insight into the contemporary management practices and neoliberal culture found in many of our universities, and it raises questions about academic authority and how it secures its legitimacy by way of a participant’s case study or auto-ethnographic account. I tell how after making complaints about the style of management of the primary protagonist I was ‘sacked’ by the university, which misused the redundancy provisions of the enterprise bargaining agreement (EBA). After nearly four years the matter ended up in the Federal Court which in May 2013 saw Justice Gray issue a damning judgment, order my immediate reinstatement and fine the university.

This story centres on an extreme case. Yet like most stories about modern organisations it cannot be explained just by framing events in terms of neoliberalism and managerialism. It is also a story about conflict between the authoritarian character of contemporary university versions of managerialism and an academic ethos of positive freedom and public scholarship grounded in the idea that academics have a right, even an obligation, to engage in debate, and to seek to hold people, including their managers, accountable to certain ethical and rational criteria. It is also a story about dissent and conflict as it highlights opposing concepts of authority regarding ideas about education and academic practice. It is about rival claims to legitimacy grounded in contesting intellectual and ethical traditions.

As never before, universities have become sites of contest about who gets to say what they are for and who gets to establish the standards by which they are evaluated.

Background

In the late 1980s as a young academic, I was keen to have a future in what I saw as a prestigious and honourable profession – the academy. With a crisp new PhD in hand, and a couple of infants in tow, I got my first academic job. Starry-eyed and with great expectations, I looked forward to working in an environment that valued good teaching, that engaged in intellectually rigorous research, and that promoted well-informed debate. Later I would call this the idea of the 'university as public conscience' and the practices that make possible 'public scholarship' (Mitchell 2008). I was also committed to the value of being able to speak out as an exercise in positive freedom. I assumed I could and would relate to colleagues and students in a straightforward way, including those in positions of authority over me. As I learnt some time later, courtesy of Foucault, the Greek word for this, speaking truth to power, is *parrhesia*, described as establishing an ethical contract with others in a hierarchy of power: the speaker tells the truth without concealing anything while the 'figure in authority' listens to any critical truth without punishing the speaker (Tamboukou 2012, 849–65).

How far I had travelled and how much had changed since those early career days in the late 1980s is highlighted when I fast-forward to 16 May 2013. After four hellish years at Royal Melbourne Institute of Technology University, I was in the Federal Court of Australia on a wet and wintry day in Melbourne to hear Justice Peter Gray hand down his judgment in *NTEU & Bessant v RMIT* (*NTEU*).[1] Seated in the tastefully modern Federal Court, on my left were my National Tertiary Education Union (NTEU) colleagues who stood beside me through it all, among them NTEU's Senior Industrial Officer, Linda Gale, who remained a strong and stable figure throughout what turned out to be a four-year calamity. To my right and behind me were my family and dear friends. Our talented barrister, Joel Fetter, stood at the bar table alongside our on-the-ball solicitor, Elizabeth McGrath, and opposite the university legal team. Representatives from the university were sitting further down the pews.

We all stood as the Clerk of Court banged his gavel to announce the entrance of Justice Gray. It was a big day for us all. Appointed to the Federal Court in May 1984, it was Justice Gray's last day before retiring. I was there to hear his judgment on a trial which ran from October 2012 to February 2013, which followed many days in Fair Work Australia.

1 *National Tertiary Education Union and Bessant v Royal Melbourne Institute of Technology* [2013] FCA 451. Retrieved 8 September 2014, from www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2013/2013fca0451. In what follows I draw on the judgment of Gray J, official transcripts of that case (Transcript), documents tendered in evidence during the trial and other records of events and correspondence obtained through FOI, Rights of Entry and discovery.

Justice Gray began reading his judgment, beginning with his conclusion and orders. He found the university took unlawful adverse action against me when they terminated my employment in April 2012 because I exercised my workplace rights. Specifically I made complaints about the behaviour of my immediate supervisor (NTEU [139], [140], [141], [145]). Justice Gray's judgment was that the university breached s340(1)(a)(ii) of the *Fair Work Act 2009* (Cth). In addition he found that the university contravened s50 of the *Fair Work Act 2009* by failing to comply with the RMIT Academic and Professional Staff Union Collective Agreement when at the time certain managers knew my 'position was likely to have an uncertain future', they failed to offer the option of voluntary redeployment. A substantial fine was imposed for each of the proven offences. Justice Gray also ordered my immediate reinstatement, specifying that I be treated 'as if I had been employed continuously by the respondent from 20 April 2012 up to and including the date of [her] reinstatement' (NTEU [147]). Copies of the 64-page judgment were handed to relevant parties, the judge stood, bowed and left the courtroom. RMIT University had three weeks to appeal his decision, but there was no appeal.

Events leading to the judgment

As I remarked earlier, implicit in my identity as a young academic in the late 1980s was the idea of the university as a space of public scholarship where the distinction between managers and academic work was improbable. By 2012, after an extended period of being treated poorly and finally losing my job because I complained about my manager, it became apparent that a sharp distinction between managers and academics had evolved.[2] Over those decades academics had been stripped of the intellectual authority they once seemed to enjoy. In part, this story highlights how in many instances managers rather than academics now make judgments about academic practices and speak on behalf of the university.

One significant feature of this case is that we cannot presume that our public universities are necessarily managed by officials with a strong regard for the rule of law, or for truth safeguarded in an ethos of open, intellectually and ethically rigorous deliberation. On the issue of whether we have seen a decline in deliberative decision-making forums that are inclusive of academics, I suggest that such a decline is evident. This is reflected, among many other things, in changes such as the new laws and practices pertaining to the membership of university governance bodies. I refer, for example, to Victoria's *Education Legislation Amendment (Governance) Act* 2012 that removed requirements for

2 Most, but not all, of what I detail below came out in the court proceedings.

elected academic and student representation on university councils, and the 2012 *University of Tasmania Act* that similarly reduced academic and student representation and changed the composition of the university council. These developments point to a steady push towards reduced shared governance, and towards reduced deliberative practice that is inclusive of key stakeholders and those with a direct interest in decisions made. Whether we have seen university officials become less constrained by the rule of law is far more difficult to determine. All I can say is that in this instance it was demonstrated in a court of law that the fact we have laws prohibiting certain kinds of conduct did not constrain decision-makers from acting in unlawful ways.

Whether we describe it as the 'enterprise university', a 'neoliberal ethos', 'managerialism', or 'New Public Management', what is also clear is that some management-cum-governance problems now affect the integrity of academic teaching and research in a number of our universities. This is *not* to overlook managers who are committed to the idea of a university in which academic authority and legitimacy are taken seriously. I have direct experience of many good university managers who remain effective guardians of the integrity of 'their' institution but, in the context of the modern university, they are a minority.

As Arendt (1967) argued, it is by telling stories that we can grasp the truth of events and thereby disclose practices which enlarge freedom. Here I tell a story of how I found myself that day in the Federal Court of Australia, and do so mindful of the fact that this approach enables some understandings and insights formed after the event.

The trial vindicated my conviction born from harsh experience, that certain normal and useful provisions for redundancy established in Australian industrial law were misused. The court found that arguments by university representatives about 'a business case' were spurious. As Justice Gray noted in his judgment:

> As I have already found, Professor Gardner was well aware that Professor Hayward wished to have Professor Bessant dismissed from her employment for reasons that were entirely unconnected with the financial difficulties … The personal nature of the conflict between Professor Hayward and Professor Bessant, which included the complaints Professor Bessant had made about Professor Hayward, was well-known to Professor Gardner … In such circumstances, on receiving Professor Hayward's memorandum of 2 March 2011 (which was clearly directed to securing the ultimate removal of Professor Bessant) and his memorandum of 28 June 2011 (which sought her approval of the removal of Professor Bessant), it might have been expected that Professor Gardner would take steps to ensure that the 'business case' that was being made was not designed to conceal an ulterior motive on the part of Professor Hayward. Professor Gardner did no such thing (*NTEU* [120]).

As I show in this chapter, the redundancy provisions were used to punish and silence me.

I begin with a brief outline of Justice Gray's judgment.

The judgment

Justice Gray found that redundancy provisions were misused to terminate my employment because I exercised my workplace rights and because I formalised complaints against Professor Hayward when he was my supervisor. Professor Hayward was also found to have displayed animosity toward me soon after his appointment to the university in 2009 and, as mentioned, the Vice-Chancellor (VC) was aware of that:

> There is no doubt that Professor Gardner was well aware that Professor Hayward harboured animosity towards Professor Bessant. Professor Hayward's memorandum dated 18 March 2010 … made Professor Gardner well aware that Professor Hayward was keen to have Professor Bessant removed from the School. Although she regarded it as inappropriate that she should be called upon to deal with an issue of the kind raised by the memorandum, Professor Gardner did not say that she put it out of her mind when she came to make her subsequent decisions. Nor did she have any discussion with Professor Hayward about the inappropriateness of his approach. She spoke only to Professor Fudge, to tell him that she did not want to see a memorandum like that of 18 March 2010 on her desk again. (*NTEU* [101])

In short, Justice Gray found that the story advanced by the university for terminating my employment, namely that there was a financial crisis and no work for me, was inauthentic. Evidence was given how Professor Hayward, without notice aggregated my salary (which for budget purposes was originally allocated on a 50 per cent basis to two discrete work units) into a single discipline area. This meant my 'remuneration was allocated entirely to the budget' of one small program area. The immediate effect of this action was to exacerbate the budgetary stress in that unit. That was then used to support the 'business case' for my dismissal (*NTEU* [34], [112]).

Additionally, Justice Gray found there were no contemporaneous criteria or reasons developed or used to identify my position as redundant – as required by law:

> One of the most disturbing aspects of this case is the absence of any contemporaneous account of the reasons of Professor Gardner for deciding that Professor Bessant should be made redundant (*NTEU* [110])

Justice Gray continued:

> Anyone with a background in the discipline of industrial relations, which Professor Gardner had would understand the importance of recording decisions for dismissal. No such reasons were recorded. (*NTEU* [110]).

Moreover, criteria that were finally developed were drafted *ex post facto*, after I had been targeted and after it was pointed out to the university in Fair Work Australia that criteria did not exist (*NTEU* [72], [82], [116]). Justice Gray observed that had those *after-the-fact* criteria been applied impartially it was highly likely my position would have been secure:

> The criteria presented to Deputy President Hamilton (Fairwork Australia) with the letter dated 23 September 2011 appear to have been created by somebody to answer the obvious criticism that there had been no criteria applied in the choice of the position of Professor Bessant as the one to be made redundant. If there had been criteria of the kind specified in September 2011, there is every reason to suppose that Professor Bessant would have fared well if judged honestly by reference to them (*NTEU* [115]).

The judgment pointed to substantial evidence of adverse action. Without notice, my title and work-plan were changed to restrict my work (*NTEU* [49], [39]). I was stood down as Discipline Leader by the Dean via email without any notice or consultation. This occurred immediately after I made a complaint about him. As a result of the Dean's action, I blacked out, fell and suffered a physical injury (*NTEU* [43]). Soon after, a formal notification of an Industrial Dispute was lodged. That dispute related to Professor Hayward's treatment of me and an 'Issues Resolution Committee' was established to resolve the dispute. That Committee found in my favour. As a result a formal 'Settlement and Release Agreement' was signed by all parties, including the university which, amongst other things, agreed that I undertake a period of three years' research work. However *on the same day* (29 April 2011) that the *Settlement and Release Agreement* was signed, redundancy papers were prepared which abrogated that Agreement (*NTEU* [61], [81]).

In addition the conventions of due process were ignored. A second internal university review mechanism, a Redundancy Review Committee (RRC), also found that the university had acted unfairly and that rules of natural justice had not been applied (*NTEU* [80], [121]). The VC overrode those findings. Justice Gray found that:

> … she [Professor Gardiner] did not undertake anything like the examination of the documents which she said she undertook following the receipt of the Redundancy Review Committee's report. In justification of her failure to investigate whether Professor Hayward was hiding his true motives behind the 'business case', Professor Gardner gave evidence that she was concerned only

> with the question whether the financial case stood up in its own terms. In other words, on her own evidence, Professor Gardner was not concerned with the possibility that Professor Hayward was using the financial case as a pretext to seek the dismissal of Professor Bessant for reasons of his own. Professor Gardner's approach was not that of the impartial decision-maker (*NTEU* [120]).

Justice Gray's decision finds that 'Professor Gardner's reluctance to delegate anyone else to consider the report of the Redundancy Review Committee (RRC) is also significant' (*NTEU* [121]).

> Her evidence is that she was surprised by the findings of the committee. This was the first occasion on which a Redundancy Review Committee had made findings critical of one of Professor Gardner's decisions in relation to the redundancy of an employee. Despite the finding of the Redundancy Review Committee that the process in relation to Professor Bessant had been unfair, Professor Gardner did not see any need to have the process conducted again. Although she spent some time in Indonesia following her receipt of the report, she did not consider delegating the decision to anybody else. There is no doubt that she could have done so. Clause 3.14 of the Enterprise Agreement defines 'Vice-Chancellor' to mean the Vice-Chancellor of RMIT or her or his nominee. Her evidence indicates that Professor Gardner did not wish the ultimate decision on Professor Bessant's case to fall into the hands of anybody else (NTEU [121]).

He continued that the VC's own actions in responding to the RRC's findings suggested that:

> Professor Gardner was committed to making Professor Bessant redundant. She was attempting to put out of her way the issues raised by the Redundancy Review Committee, without having to consider their substance, because a proper process might have resulted in a different decision (*NTEU* [123]).

> Professor Gardner's approach to the processes involved in making Professor Bessant redundant suggests that she was setting out to achieve a pre-determined result and would not allow herself to be diverted by anything that might prevent that result from being achieved (*NTEU* [124]).

Justice Gray found that 'Professor Gardner was well aware that Professor Hayward wished to have Professor Bessant dismissed from her employment for reasons that were entirely unconnected with the financial difficulties' (NTEU [120]). 'The personal nature of the conflict … which included the complaints Professor Bessant had made about Professor Hayward, was well known to Professor Gardner at least from her receipt of Professor Hayward's memorandum of 18 March 2010' (NTEU [120]; see also NTEU [101]).

In what follows I describe some of the events and processes which lie behind this case.

Ticking all the boxes (2004–2009)

In mid-2004, I was recruited to RMIT University as Professor in Youth Studies and Sociology. I was appointed to two discrete discipline areas: Youth Work and Social Science, with half my salary coming from the Youth Work budget and the other half from the Social Science budget. My brief as Discipline Leader in Youth Work was to concentrate on renewing and consolidating that area, after which I would move to another discipline in the School. I note that while renewing the program was a priority in the first four years of my employment at RMIT, most of my academic work was outside the Youth Work area.

From mid-2004 I continued being an active researcher. In that time, I was Chief Investigator on three large ARC grants, published five books, authored dozens of book chapters and many articles in refereed academic journals. I was formally identified as one of the top researchers within a very large school. I also carried a full teaching load, I taught into 'common courses' across the School and into Youth Work. I was also a successful manager. For some of that time I was the School Research Director. From 2004 until 2009 I chaired the university-wide committee that oversaw the examination and classification process of all research degrees within the university. From mid-2004 until 2009 I was also an active member of the university research committee and a member of Academic Board. For all that time I also served on the School Research Committee (and for some years I also chaired that committee). I was on the School Learning and Teaching Committee and on the School Executive. I renewed the Youth Work undergraduate program, developed new courses and developed a new postgraduate degree. I was also the Discipline Leader for Youth Work. In addition I was active in 'community outreach' work that included developing a new sociology curriculum for the State Education Department for years 11 and 12, had been on Board of Management Committees and an adviser to NGOs and government agencies, etc. I was ticking all the boxes and took my responsibilities seriously.

My work effort, capacity or accomplishments were never an issue. It was recorded as a 'fact' that I had 'an impressive curriculum vitae as an academic', that I had 'experience as a scholar across a wide range of disciplines in the social sciences', that my 'list of publications indicates that [she] is a scholar of high standing' (*NTEU* 33). University managers in the witness box concurred. As Justice Gray observed of Professor Hayward's evidence:

> Notwithstanding that he [Professor Hayward] described Professor Bessant as 'a very good researcher', as 'scholarly and of international standing' and as 'an impressive teacher', Professor Hayward recommended against relocation [to another area in the School] (*NTEU* [46]).

Between 2004 and August 2009 senior staff in the School and in the university had been committed to developing the youth work area. Among other things, it was evident in management decisions in 2008 to appoint new senior staff and to develop a postgraduate degree in 2009 designed to bring in revenue to sustain the area. By mid-2009, my task in building and consolidating the area was near complete. I had just finished developing and guiding a new postgraduate program through the maze of university vetting processes and committees and obtained final approval. Marketing the new program had begun with an overwhelmingly positive response from prospective students. I was looking towards bedding that new Master's program down before exiting youth work and focusing more of my work in other areas in the school.

In August 2009 all that changed when David Hayward was appointed as Dean of the School.

Bad times begin …

In August 2009 the new Dean and I had several meetings. In those early meetings he displayed what became a persistent pattern of behaviour. This including making innuendoes referring to what he described as 'historic events'. Unbeknown to me at the time, those 'historic events' referred to my whistleblowing some 20 years earlier. Over the following months, and indeed years, I asked Professor Hayward for details. He refused, but continued with allusions to 'those events'.

Some time later I discovered, after reading internal university memos,[3] the 'historic events' referred to a darker story relating to my early history at RMIT-PIT[4] in the early 1990s. They referred to reports I made about certain disturbing disclosures made to me by young people who sought my help. Those young people reported inappropriate sexual conduct towards themselves, and towards others, by a then senior university staff member and another person working in child protection. I reported the matter to RMIT university senior management and later to the Human Rights and Equal Opportunity Commission (HREOC). This whistleblowing was being ominously alluded to by Professor Hayward 20 years later and was cited by him in his (18 March 2010) memo to the VC as one of the reasons why my dismissal was a good option.

3 Hayward 18 March 2010, 3. See also, for example, memo (HR, RMIT, 14 October 2010).

4 Phillip Institute of Technology (PIT) amalgamated with RMIT.

The substance of those disclosures was later confirmed by a number of internal and external inquiries.[5] At the time, however, there was no public acknowledgement of any wrongdoing or unlawful conduct relating to the person in question. Instead the individual was quietly 'moved on'. I was disappointed by the response although, as responses to revelations about equivalent abuse in other organisations came out over the years, I soon realised that the practice of saying nothing and quietly moving people on was the norm.

What I did not fully appreciate at the time was that the failure to make public what had happened would have significant implications for me later down the track. Twenty years later the matter reared its ugly head. Unbeknown to me it became a topic of conversation and indeed a rationale used to terminate my employment. This, I discovered very late in the piece, is what the Dean was referring to in his innuendos about historic issues.[6]

Very soon after the Dean's arrival at RMIT he sent me an email advising that he had cancelled the new postgraduate program. This was done without consultation or prior notice. He chose to communicate that information to me by email even though my office was adjacent to his. (I note that I just spent the two previous years developing the new program. David Hayward's decision came just months after the program had received final university endorsement and after we had embarked on a marketing program).

Following that communiqué came a quick succession of similar surprises. In November 2009 the Dean informed me he had organised an external review of the undergraduate Youth Work program that would begin immediately, before Christmas 2009. Again this was done without any notice or consultation. I politely expressed surprise that neither my colleagues nor I were consulted about the fact a review of a program (that had only recently undergone a curriculum renewal) was to take place, that we hadn't been consulted about the terms of reference, timelines, or who was best placed to carry out the review. I also expressed disappointment we had not been afforded the opportunity to review the program ourselves as a first step. I pointed to the errors in the documentation the Dean had prepared for the external review, and described how some of his commentary in the document was likely to be offensive to the staff named.

Within a week or so the Dean changed his mind, agreeing that staff could undertake an internal review. He said the program area was in deficit and that savings needed to be made. While not disputing his claim, I pointed to the

5 E.g. by university inquiries (one led by Faye Marles) and by a State Government inquiry involving the former Minister for Youth Affairs, Vin Heffernan, that led to a Review of Youth Work education in Victoria in 1995.

6 See, for example, David Hayward to VC, Margaret Gardiner, 18 March 2010.

other program areas in the school that were in deficit and asked why they were receiving different treatment. I also referred him to the university's earlier plans to invest in the youth work area, suggesting it would make good sense to reap the returns on that investment already made in its development by proceeding with the postgraduate program that would generate income. Finally, I proposed that after we completed the review I move out of youth work into another area in the school, as was the original plan, and that this would help ameliorate 'the fiscal problem' he identified.

These unexpected decisions and the various chopping and changing that took place within a relatively short timeframe affected staff, and some became ill. The Dean interpreted this as an industrial strategy and resistance to his authority and to his plans. I point out on many occasions that no-one was resisting change, nor was I organising a 'political campaign' as he insinuated. I set about finding savings. I note that at the time the Dean was restructuring the entire school and that 'my group' was the only academic unit not included in the new administrative restructure.

In late 2009 all this took a toll on my health; I became unwell and took leave for one week. I recovered and returned, ready for work. Nonetheless I was instructed by the Dean not to return until I had provided a 'certificate of fitness to work', which I experienced as another form of harassment. I saw his 'instruction' as differential treatment, noticing that other staff in the school (some of whom had been seriously ill) had returned to work and not been required to produce a fitness-to-work certificate. I read the university guidelines on 'fitness for duty' and sought union advice. My circumstances did not fit those described in the guidelines, and the NTEU advised me the doctor's medical certificate confirmed my capacity to work and that no further proof was required. I communicated that information to the Dean.

At this time I submitted incident reports to RMIT Human Resources and sought advice from the university Ombuds. My concerns related to the Dean's erratic behaviour (e.g. taking me off the school executive then, soon after, reinstating me), his ongoing innuendo and references to what he described as 'historic issues', the constantly shifting goalposts, unreasonable timelines, intimidation, failure to consult, stigmatisation and a dictatorial management style. In late 2009 and early 2010 four academic staff in 'my' program area and I complained to the occupational health and safety officer.

In December 2009 just prior to taking Christmas leave, I met with the Dean in the hope that a frank conversation might assist and I tabled an informal complaint to him directly. In that meeting I explained to him why his decision to exclude some staff from a school 'academic restructure' that included everyone was problematic and how it made those people feel stigmatised. I asked for a

decision to be made over the summer break about location of those staff into the new academic structure and said I would like to be included in that decision. He gave an undertaking that would happen before my return to work in early February 2010.

Also in that meeting, I repeated my request for information about his continuing references to still unspecified 'historic issues', raising the idea of natural justice, and saying I would like the opportunity to respond to what was said. He refused to provide any detail. I explained how I experienced his practice of repeatedly removing me from the school executive and then immediately reinstating me as erratic and disturbing. Finally I asked whether he thought it was possible for us to work in ways that avoided the grief of the last few months. At the end of the meeting he thanked me for not formalising a complaint.

Over the Christmas break I worked to make immediate budget savings. On returning to the university I met the Dean and detailed an initial savings plan that I had developed with colleagues. In response, and much to my surprise, he didn't want to talk about the savings. Instead he retrieved a telephone bill from a red folder on his desk and read out that I had spent $40 on my work phone downloading documents over the Christmas break. This, he said, demonstrated I was not serious about making savings. I considered his response bizarre, and was disappointed given the work I had done over the summer holidays to achieve the agreed-on financial goal.[7] In that meeting I also drew attention to the fact that staff in 'my' area remained outside the new organisational restructure while all their colleagues were well and truly integrated into the new arrangements. I reminded him of the undertaking he had given in our last meeting that they would be included. I explained that those staff were complaining to me, as their immediate supervisor, about what they experienced as exclusionary treatment.

The situation did not improve. The innuendo and references to 'historic issues' and 'things people were saying' continued.

On 18 February, several youth work staff and I met the school health and safety officer to make a complaint and seek advice. Soon after, on 22 February 2010, I had my annual work-plan meeting with the Dean. As was standard practice, I provided a written plan and we discussed my role as Discipline Leader. There was detailed discussion about how that role would evolve and the kind of support I might need. We spoke of the savings already made and I provided a written summary of the savings. I explained my plans to meet with the school finance officer to establish how more savings could be made.

7 Despite that discouraging response, I remained committed to making the savings, and made appointments with the relevant finance officers to seek their assistance.

In a bid to resolve outstanding matters, I also met with RMIT HR staff on 26 February 2010. In attendance were two HR staff, the occupational health and safety (OHS) officer and a union official. I remained cautiously optimistic, thinking that with a little good will we could navigate what had become a difficult situation. I was assured by HR staff that the meeting was confidential until they themselves had time to get advice and until I had time to consider their advice and the options available. Unfortunately, however, that evening the OHS officer sent out a group email and copied in the Dean. In that email she revealed to him that a meeting took place that day between myself and HR and revealed the content of that meeting.

Two working days later, on 2 March 2010, just as the semester's teaching was about to begin and without any prior notice or consultation, I received an email from the Dean that he was standing me down as Discipline Leader. Given the way the decision was made and communicated, and despite the fact that my role as Discipline Leader was discussed at a work-plan meeting just one week earlier and nothing had been said of any changes to my role, I was literally shocked. On reading the email I stood up and collapsed, hitting my face on the chair as I fell. I sustained facial injuries and knocked out one of my front teeth. On medical advice I took two weeks' leave, had dental treatment and was advised by my doctor to avoid the Dean.

While on leave I submitted an OHS incident report to RMIT HR, notifying them of the email and my injury. I received no reply. Over the following weeks and months I attempted to contact RMIT HR more than two dozen times by email and phone seeking their assistance in my return to work. My primary concern was that the Dean's action made it unclear what my work-plan was. I was no longer Discipline Leader, and while I was on two weeks' leave recovering from the injury, my teaching was assigned to others.

When I returned to work, the Dean asked me for another 'fitness to return to work certificate'. I reminded him of our last conversation about that matter and that a doctor's certificate verified my capacity to work.

The Hayward memorandum 18 March 2010

Little did I know at the time, however, that plans had already been hatched by my Dean and communicated to the VC which argued for the termination of my employment.[8] As Justice Gray observed:

8 Memo from Professor David Hayward to Professor Margaret Gardner, cc Professor Colin Fudge, 18 March 2010.

> The contravening reasons for Professor Bessant's dismissal were kept secret. Even in Court, they were not addressed by Professor Gardner, and others who could have shed light on them were not called to give evidence (*NTEU* [141]).

Justice Gray described this as an 'options paper' (Transcript 14 February 2013, 589). I would call it a chilling example of what, unknowingly, I was facing.

On 18 March 2010, and 16 days after standing me down from the Discipline Leader role, the Dean wrote to the VC. He advised her that my position was 'no longer tenable for a mixture of inter-personal, organisational and financial reasons' (Memo from Professor Hayward to Professor Gardiner, 18 March 2010, *NTEU* [45]). That sentence alone gives the lie to the official story that my redundancy was motivated purely by financial reasons. In justifying his conclusion the Dean cited what he saw as my political orientation: 'It was clear to me that a core part of the problem was Professor Bessant. In the continuum of leadership styles in universities, Professor Bessant sits at the left and is strongly anti-managerialist' (Memo from Professor Hayward to Professor Gardiner 18 March 2010, *NTEU* [45]).

It was an email that signalled his approach to dealing with lawful complaints I had made about his treatment of me after his appointment in August 2009. In that memo Professor Hayward unaccountably failed to inform the VC that I had made complaints against him. Instead he claimed that I was a troublemaker referring to the whistleblowing action I took 20 years earlier. Professor Hayward also unaccountably failed to inform the VC about the content of those complaints regarding patterns of inappropriate sexual conduct towards young people (mentioned above).

This memo from Professor Hayward foreshadowed the storm to come. At that time and for the next few years I had no inkling that correspondence or similar papers existed and thus had no opportunity to correct the record or to prepare myself for what was to come. That document and others like it were obtained later through a Right of Entry inspection by the NTEU and 'discovery' processes relating to the court case. Those documents, which were either misleading, overly selective and/or factually incorrect, worked to prejudice the VC and others who knew of their content. Documentation like that also gave the lie to the official university line that my position was terminated for purely financial reasons.

In respect to this and another similar early document, Professor Hayward stated under oath that he had not considered the option of terminating my employment until mid-to-late 2011. Justice Gray did not, however:

> accept that a document of this size and detail would have been prepared just in case Professor Hayward ever wished to use it, which was his explanation for it.

> In my view, it demonstrated Professor Hayward's desire to see Professor Bessant dismissed from RMIT, a desire he harboured at least as early as March 2010 … and that he sought to implement (*NTEU* [53]).

And later Justice Gray reiterated the point that contrary to arguments about finances, from day one plans were afoot to have my employment terminated: 'Well, I can read it, Professor [Hayward]. It's very clear. The position is untenable because she won't do what you want' (Transcript, 14 February 2013, 600).

In his questioning of the VC, Justice Gray also put to her:

> So you've got Professor Hayward who has been gunning for Professor Bessant for some time. He has finally got himself a business case that you accept. He has got himself a targeted redundancy that you accept. It's all a bit iffy (Transcript, 14 February 2013, 670).

Seeking assistance from the VC and WorkSafe

In mid-April 2010 and not knowing about the Hayward memo, I met the VC (at my request) to seek her assistance. I described to her the recent events, their impact on me and requested that I be moved away from Professor Hayward to another part of the university. This I argued would also help address the financial problem facing the youth work area. In that meeting, the VC made no mention of the fact she had just received 'advice' from the Dean proposing the termination of my employment. At the end of that meeting she said she would discuss the matter with Professor Colin Fudge, the Pro Vice-Chancellor in charge of my College. Thereafter I attempted to seek assistance from Professor Fudge: however, on most occasions when I did so he was overseas and unavailable.

After months of trying to contact HR and receiving no response, I contacted Worksafe. I wanted advice, given that the university's Human Resources had failed to respond to any of my requests for help in returning to work. They had also not responded to any of the incident reports I submitted. I had also asked HR how I might respond to the issues about the Dean that I raised with them in early 2010. As a courtesy I notified HR and RMIT senior management that I was meeting with Worksafe and explained why.

Worksafe advised me that 'poor management' *per se* was not unlawful and that, given I had received no response from HR about my complaint, the best way to proceed was to submit a bullying complaint. I was advised that because the university had statutory obligations to react to such complaints, such action would force the university to respond. I took that advice and on 17 June 2010, I submitted a bullying complaint to the university.

Secret surveillance and smoking guns

As with many cases like this, there are always larger back stories than the more narrowly construed issue of adverse action might suggest. It is clear from the evidence presented in court that from at least March 2010 the Dean was committed to terminating my employment, which he achieved in April 2012. It was a commitment that also saw him organise covert electronic surveillance of me in a bid, to use his own words, to find a 'smoking gun' that would further his case against me.[9]

When the Dean stood me down as Discipline Leader in early March 2010 it was just days into a new semester. Apart from my own health issues, other colleagues also become ill (Transcript, 31 October 2012, 317; 1 November 2012, 414–7; 2 November 2012, 516, 524–5, 554–5).[10] The Dean was also informed that his actions were breaching the Occupational Health and Safety Act (Transcript, 2 November 2012).[11] The Dean seems to have interpreted their sick leave as an industrial strategy, one which I was orchestrating using my 'charismatic' power. The suggestion was offensive and indicative of a failure to appreciate the impact of the Dean's behaviour on the health of staff. For the record, I had neither the power nor the interest in trying to influence staff to take leave, nor were the staff in question the sort of people who would allow themselves to be so manipulated.

The poor timing of the decision about my removal as Discipline Leader and staff illness caused by 'environmental risk factors in the workplace' resulted in major disruptions to students and classes in the initial weeks of the semester (Worksafe, 4 March 2011). Some students inquired about causes of those disruptions and voiced their objections. Those 'upheavals' also attracted media attention. Over the following months some students began taking various actions that included establishing websites.

9 The smoking gun' reference comes from an internal email from Professor Hayward in which he wrote: 'here is the report. Is it the smoking gun we need?' The Dean has sought assistance from IT staff to surveil my emails. I understand he was looking for evidence of misconduct that might provide the basis for disciplinary action (email from Hayward to PN cc GB, JF, 6 September 2010). Unfortunately for him there was no evidence because I had committed no offence.

10 Other staff had submitted 'Incident Reports' to HR about the Dean's actions. On this matter Justice Gray said: 'it seems odd that HR go into a spin when there are a lot of incident reports coming in, because a lot of incident reports might just indicate that something is really, really wrong' (Transcript, 14 February 2013, 586).

11 See also findings from Worksafe inspector: 'I have formed the reasonable belief that there are work environment risk factors in your workplace, such as poor management actions and a poor consultation process in relation to the restructure of the area you work within, and your removal from the Discipline Leader position' (L Dekic, Worksafe Report, 4 March 2011).

Without my knowledge, certain 'informational cascades' about the responses were gathering momentum. Unbeknown to me at the time, the Dean organised electronic surveillance of me. As I discovered later the Dean believed I was conspiring with students to carry out a political campaign directed at him and the university.[12] To be clear, I had little knowledge of the student responses at that time and was certainly not involved in them.

By late 2010, relations between the Dean and students had become so difficult that he applied for an intervention order against one student. The student reciprocated with an application for a Personal Safety Order against the Dean.[13]

In late September 2010 an internal RMIT document came into my possession that shocked me deeply. It was an RMIT report instigated because it was 'suspected' I might have encouraged students to complain and that I might have 'disclosed documents' in ways that 'breached policy'.[14] The surveillance was to undertaken in an attempt to discover evidence to support this claim and provide the basis for initiating disciplinary action against me.

In spite of the fact there was no evidence for these claims, the report wildly speculated that I 'could have' used my work credit card to pay for the establishment of a student website and that I 'could have' used my RMIT-funded mobile phone to upload documents on to a student website (Bristow to Harwood memo, 6 September 2010). No evidence was found because those things did not happen. The allegations were untrue, offensive and defamatory. Nonetheless, some people wanted to believe them. Having said all that, I add that I believe students have a right to make complaints and to protest about matters of direct interest to them.

I recall thinking at the time how this charge against me seemed so large and fanciful that those who heard about it would say 'he couldn't have made that up, it must be true'. The timing and cascade effect of the story provided opportunities and time to adorn the story, to create a damaging representation in the minds of those privy to the whispers and secrets. Concealment of the charge meant I had no opportunity to respond. At the time I was reading Cass Sunstein's *Infotopia* (2006) which helped me understand a little better what was going on, particularly Sunstein's account of 'informational cocoons' and how they enable damaging stories to flourish because they are not challenged. Sunstein notes such practices are especially virulent in workplaces characterised

12 E.g. email from Noonan to Hayward, Bristow, and Fergusson, 7 September 2010, Youthworks investigation v1.0.doc. See also Bristow to Bramwell, 2 April 2012, subject PC.4.12 Privacy complaint.

13 This intervention order came on the cusp of similar action by another RMIT Head of School (*Sydney Morning Herald*, 14 April 2011).

14 Memo to B Harwood from G Bristow (Manager, IT Security), 'Investigation into Youthwork.biz email and website', 6 September 2010.

by silos inhabited by like-minded people who mostly talk and listen to each other and who self-censor in ways that inhibit their capacity to ask questions and consider things clearly.

I was also reading the story by the academic, Owen Lattimore (2004, 8), who was persecuted in the USA in the 1950s by McCarthy for his alleged Communist tendencies. His account of being lied about and how it destroyed his career resonated with what I was experiencing:

> A big lie of this kind would not stand just by itself … Clearly I had to face the danger of supplementary lies, perhaps it would go as far as perjured evidence, I would have to face that possibility. I had yet to learn that McCarthy is a master … of the little ball-bearing lie that rolls around and around and helps the wheels of the lie machine to turn over.

Similarly Ellen Schrecker's book *No Ivory Tower: McCarthyism and the Universities* seemed to have a few lessons for Australian higher education (Schrecker 1986).

Scandalised on learning what had happened, and with my faith that rationality would prevail still intact but somewhat tattered, I wrote to the VC expressing concern and informing her that what was claimed was untrue and damaging to me. I asked her to take action to stop the spread of those stories.

Notice of dispute: Issues Resolution Committee and the agreement

In August 2010, the NTEU sent the Dean a formal notice of dispute about his action in standing me down as Discipline Leader. Some eight months later, in March 2011, an Issues Resolution Committee was established in accordance with the EBA to resolve the dispute. It consisted of one staff representative and one NTEU representative and was chaired by a Pro Vice- Chancellor.

On 30 March 2011, I provided evidence to the Issues Resolution Committee about the erratic management style I had been subjected to, how I was stood down, and spoke of the impact this had on me. On hearing the evidence, from me and Professor Hayward, members of the IRC, through the Chair, moved to resolve the issue in dispute and to mitigate the damage. The Chair (Pro Vice-Chancellor Kirk) formalised an agreement that I be located in a research position for three years, that research seed funding be made available and that my dental bills be paid for by the university. All parties agreed and a formal written agreement was signed.

During that process there was no indication that my redundancy was planned, although the NTEU and I raised the question of redundancy in the IRC proceedings. The reply we were given by Professor Hayward was that 'no-one in the university was immune from redundancies … not even the Vice-Chancellor or the Dean were immune'. The idea that a VC or Dean of a School could be made redundant in a university seemed so preposterous to me that I took that statement as an assurance that 'a three-year research' position meant what the words said. If I had formed the view that it was Professor Hayward's intention to terminate my employment, I would obviously not have agreed to sign the dispute settlement. On 29 April 2011, all parties signed the formal 'Settlement and Release of Agreement'.

I thought things were finally resolved and that I could go back to work. I took four weeks' annual leave. Unbeknown to me, *on the very same day* that the Agreement was signed, documentation was signed off that resulted in the termination of my employment.

About this, Justice Gray said:

> It does seem odd to the outsider that one minute there's a job for you, it's a research job … and the next minute, you are being made redundant …. It looks odd to me (Transcript, 14 February 2013, 645) … It seems so utterly irrational to me that one arm of the university enters into an agreement with a professor, in a particular situation, and within a very short time, another arm of the university does away with it altogether. It doesn't add up to me … Don't you have to say you have a bit of a problem here with redundancy coming hard on the heels of this agreement? (Transcript 14 February 2013, 649).

He continued: 'the thing that to me makes this case so exceptional is that so recently before the redundancy, there was an agreement on behalf of the university and you can't run away from it' (Transcript 14 February 2013, 654).

Listening to this discussion in the courtroom, I couldn't help but think of Alan Ryan's (2012, 329) account of Hobbes' condemnation of intentional breaches of such a formal agreement. It was like a message from the dead:

> Hobbes thought that injustice was literally illogical … to say, 'I promise that I will do such and such, but have no intention of doing so', comes very close to saying , 'I shall and I shall not do it' … saying 'I promise' while having no intention to do so, is not self-contradictory but wicked. The contradiction between what I say and what I know I shall do is, as with lying, the essence of deceit, not a defective logic.

More secret business: Changing my title, restricting my work and salary relocation

It was around this time that I noticed three developments had taken place without my knowledge. First, on 13 May 2011 I noticed my official title on the university webpage had mysteriously changed. My title, Professor of Youth Studies and Sociology, had been changed to 'Professor of Youth Work'. I sought to have the title corrected. After much ado, I received a memo (21 June 2011) explaining that it was decided the correction could not be made 'on advice from Human Resources'.

Secondly, I noticed my salary had been reallocated entirely to the Youth Work budget. Since my appointment in 2004, it had been divided 50:50 between Youth Work and Social Science. Again I was not informed or consulted about this change. This move was significant because locating 100 per cent of my salary into the small Youth Work area had the effect of both inflating the budget deficit of that area and lowering the student:staff ratio. Thirdly, in July 2011, I was notified that my work was restricted exclusively to Youth Work (Correspondence from Marcia Gough, Executive Director HR, 21 July 2011).

These three developments pointed to differential treatment. Restricting me to Youth Work only worked to deny me opportunities for redeployment within the school, something afforded to *all* other staff in Social Sciences. Staff in the Social Science discipline had been formally advised by the Dean that they would not be made redundant, but any staff surplus to requirement could be relocated to other areas in the school.[15]

I replied, providing Ms Gough (Director of HR) with an account of my work activities since my appointment at RMIT, noting the multidisciplinary nature of my work and pointing out that it was mostly outside the area of youth work. I referred to my position description and the fact I had a dual appointment in Youth Studies *and* Social Science. I pointed to my work-plan which detailed many cross-disciplinary projects. I also drew her attention to the university's declared commitment to the principle of academic freedom which supported an academic's right to inquire into, write and speak freely without being treated adversely.

On 25 August 2011, the NTEU notified the Dean of a formal dispute over the change to my title.

15 In a PowerPoint presentation to staff, the Dean estimated there would be five Social Science redeployments (Hayward, Powerpoint, 21 August 2012, 2). While my own position was being made redundant because there was said to be no work, staff in the Social Science program were told they could pick up what had been my work, to quote Professor Hayward: '[the] Balance of staff would join staff in Youth Work to form new unit' (Hayward, 21 August 2012, 4).

After many trips to Fair Work Australia (FWA) my title was corrected. Nothing more was said about prohibiting me from working beyond the confines of Youth Work.

A myriad of similar incidents took place along the way, including threats that I would not be paid when I was on sick leave, all of which give a flavour of the treatment I was receiving.

Employment terminated: July 2011–April 2012

With the April 2011 'Settlement and Release Agreement' in place, I took four weeks' leave. On the day of my return to work on 18 July 2012, I opened my email to find a message from the Dean notifying me that my employment was to be terminated.

The NTEU lodged notice of another dispute on 8 August 2011. That was followed by many more trips to FWA and many conciliation meetings, all to no avail. In FWA, a number of academic vacancies that existed in the school and university that I could have filled were identified but rejected by Professor Hayward in his capacity as the university representative.

I wrote to the VC on 25 October 2011 requesting another meeting to discuss the situation. She declined. On 28 October 2013, I received a couriered letter from RMIT terminating my employment on grounds of redundancy.

Redundancy Review Committee (November 2011)

In mid-November 2011, I applied for a review of the redundancy decision. A Redundancy Review Committee (RRC) was formed comprising three members, all professors.[16] The review began in late 2011 and finished in February 2012. It was long and gruelling and extended by a suspense-ridden summer interval.

On 3 February 2013, the RRC issued a report on its findings. Like the 'findings' from the first internal Issues Resolution Committee, the RRC also found in my favour, stating that: 'The decision to terminate Professor Bessant's employment was not fair' and members gave their reasons. They also found that 'the rules of natural justice have not been applied … in making the decision to terminate Professor Bessant's employment'.

Those findings were forwarded to the VC on 16 February 2012. She replied by asking me to make a submission to 'rectify the deficiencies in the process'. I responded (22 February 2012) expressing concern about her assumption she

16 One was a university nominee, another an NTEU nominee, and a chair appointed by the VC.

could rectify *ex post facto* what were substantive flaws in the process. I pointed to the fact that the investigative committee mandated by the university's own enterprise agreement, the RRC, confirmed the process was problematic. I reminded her of the history of animus between the Dean and myself and the history of adverse treatment. I also pointed to flaws in the 'budgetary analysis'.

I reminded her also that in April 2011 the university had entered into a formal agreement resulting from the Issues Resolution Committee which provided an assurance of work for at least three years (Settlement and Release Agreement of 29 April 2011), and pointed out how on the same day that document was signed the university initiated formal redundancy procedures targeting my position. I described that action as a breach of faith, and vindictive on the part of the Dean. Finally, I said that the university had failed to meet the simple test of fairness and transparency required by its own policy, the EBA and the law. None of this had a salutary effect.

The VC replied, informing me that she had overturned the Redundancy Review Committee's decision, and that my employment would be terminated on 20 April 2012. On this, Justice Gray found that she 'did not undertake anything like the examination of the RRC'S documents' (NTEU [120]):

> Despite the finding of the Redundancy Review Committee that the process in relation to Professor Bessant had been unfair, Professor Gardner did not see any need to have the process conducted again … following her receipt of the report, she did not consider delegating the decision to anybody else. There is no doubt that she could have done so … Her evidence indicates that Professor Gardner did not wish the ultimate decision on Professor Bessant's case to fall into the hands of anybody else (*NTEU* [121]).
>
> Professor Gardner's approach to the issues raised by the report of the Redundancy Review Committee was to reject its findings. Both her evidence and her letter of 8 November 2011 … made clear her determination that there should be no criteria for the selection of the appropriate person or persons to be made redundant. She rejected unequivocally the proposition that the reality of Professor Bessant's position, following the Settlement and Release Agreement of 29 April 2011, should have been taken into account. Professor Gardner made it clear that she did not like the terms of that agreement (*NTEU* [122]).
>
> Professor Gardner's letter to Professor Bessant of 16 February 2012 … is also revealing … She was attempting to put out of her way the issues raised by the Redundancy Review Committee, without having to consider their substance, because a proper process might have resulted in a different decision (*NTEU* [123]).

After considerable effort to reach a resolution, on 4 September 2012, Commissioner Ryan of Fair Work Australia (FWA) issued a Certificate under the *Fair Work Act 2009* certifying that he was satisfied that all reasonable attempts to resolve the dispute had been unsuccessful. We proceeded to court.

On 18 September 2012, the NTEU and I lodged an application to the Federal Court of Australia through our barrister, Joel Fetter. The matter was listed for 15 October 2012. We sought an injunction with the idea of securing my employment until the matter could be heard. However, the presiding judge, Justice Gray had other ideas. He dismissed the application for an injunction and much to everyone's surprise announced the matter would be heard immediately. Lawyers on all sides were stunned and appeared a little panic-stricken as they faced the prospect of preparing for a large and complex trial within a very short timeframe.

Justice Gray announced the matter would proceed on the following day (16 October 2012). My legal representative explained to him that I could not attend because I had major surgery scheduled that day. In response, Justice Gray scheduled the trial to proceed in late October 2012. We all left the courtroom a little shell-shocked.

I walked from the Federal Court opposite the Flagstaff Gardens to the hospital in Carlton for my pre-operative consultation with the surgeon. This came hot on the tail of a visit to my GP days earlier. I had been feeling poorly for some time. To cut a long story short, a very large tumour was discovered and I was listed for urgent surgery. I had been feeling unwell for many months, something the doctors put down to a psychological response to workplace stress, for which I was prescribed medication and sent off for counselling.

When I visited the surgeon that afternoon in October 2012, he informed me that the MRI results indicated the possibility of cancer. The next day, a four-and-a-half-kilo tumour was removed. As is standard practice, a frozen section was taken and sent to pathology. I was in hospital for five days. A few days after being discharged, the surgeon called me with the pathology results, reporting that I had cancer and that he would refer me to an oncologist in six weeks.

On 22 October there was a directions hearing at the Federal Court but I was too unwell to attend.

The trial begins

It was two days later – 25 October 2012. With a 'knock, knock' of the gavel, everyone stood as Justice Gray strode to the bench, head down, with his robes billowing behind. It was announced, 'the Federal Court of Australia is now is session'. The day began and I was in the witness box. In acknowledgment of my medical condition and discomfort, I was given the opportunity for rest breaks. Over the next couple of days, I was subject to examination and cross-examination.

Six weeks after surgery I visited the surgeon who confirmed the cancer diagnosis. He said I would require treatment for the rest of my life and that he had scheduled an appointment for me to see the oncologist the next day.

The following day, I visited the oncologist who looked at me, checked my records, and contradicted the surgeon, saying that I did not have cancer; the tumour was benign and had been successfully removed, and I was now discharged. What happened after that is another story, and I am pleased to say it was the oncologist and not the surgeon whose diagnosis was right. Somehow a mistake had been made. It was the first of two big wins.

Back to the court case: there was a long adjournment over Christmas. We were directed to attempt mediation over that period, but it was an exercise in futility as the university's lawyers denied there was a case to answer.

On 13 February 2013, I found myself back in the Federal Court overlooking the beautiful Flagstaff Gardens on a hot summer's day. We sat waiting for the judge. Evidence was given by NTEU officers who had supported me over the years, Wayne Cupido and Linda Gale. The Dean gave evidence for just under three days. After the Christmas adjournment the Dean re-entered the witness box for his third and final day. The VC and an HR member of staff who oversaw the redeployment process also gave evidence.

In lieu of a conclusion

The fact that two internal university review-resolution panels found there were serious problems with what had happened did not help the university's case. Their respective findings and recommendations had been disregarded. Justice Gray's incredulity at the way the formal Agreement was effectively annulled on the same day that it was signed off and the VC had overlooked the findings of reviews, stands out in my memory of this case.

Whether we call it the enterprise university, neoliberalism, 'New Public Management', or corporate re-engineering, a deeply corrosive influence is eating into the ethos of our universities (Sennett 1998). Propelled by the rhetoric about 'efficient business' practices, we see can see how excessive rule-bound hierarchical organisations antithetical to a sustainable academic community can have deleterious consequences (Balfour and Grubbs 2000, 570–84).

While 'efficiency' was always on the tip of the tongue of certain university managers, the entire episode was an enormous exercise in very costly inefficiency. The direct financial impost of the legal case itself in lawyers' bills and with the fines handed down, as well as the costs of associated activities such as staff being sent repeatedly to Fair Work Australia, the expensive internal administrative processes and so forth, to say nothing of lost productivity, cost the university, or the Australian taxpayer, a tremendous amount of money. In fact the evidence revealed how easily a university could use a masquerade of financial exigency, manufactured by management choices about how to move costs and revenue streams around within a budget, to disguise an attack on an individual employee. RMIT got caught out, but is far from being the only university, or the only employer for that matter, to dress up as redundancy the targeting of an individual employee. As Justice Gray noted:

> There was no display of contrition on the part of RMIT, particularly from Professor Gardner. She maintained to the very end of her evidence that the decision to make Professor Bessant redundant was fully justified. She made no concessions as to any impropriety. (*NTEU* [143]).
>
> The need for specific deterrence is quite high. Unless the effect of a penalty is felt, RMIT might again succumb to the temptation to make use of its redundancy processes to rid itself of an employee when it desires to do so for reasons that would be prohibited by the Fair Work Act. There is also a need for general deterrence (*NTEU* [144]).

According to Tamboukou (2012), this development has been aided and abetted by the failure on the part of too many academics to respond when universities are entering 'dark times'. As she notes (p. 865), when 'academics withdraw from practices of acting and speaking together' about the political, we fail in 'our task as teachers to inspire our students in the pursuit of freedom'. This absence of positive freedom, she argues, is a political failure.

My own experience points to much self-silencing. Once it became known I was under attack from my manager and as it became clear what norms mattered under the new regime people simply complied and silenced themselves. Competing views, disagreement or critique were described as 'political' and

unwelcome. As Sunstein observes, a belief that one's reputation will suffer, that 'we' will be punished or not rewarded for speaking, is what engenders self-silencing (2006, 202–3).

Among the instances of the new norm-setting practice, I refer to one directive to staff from the Dean that he communicated very soon after his appointment. It was a directive instructing senior staff 'not [to] send or participate in group emails of this type from now onward' (Hayward to various staff, 29 October 2009). My understanding was that such 'group emails' were deemed to be political. It did elicit a critical response from one senior member of staff that same day: 'Dear David, I disagree entirely. I maintain that I have every right to talk to my fellow discipline leaders; that email is often the only way, and that my staff have the right to know what I am saying/doing.'

That lone dissenting response sank without trace.

I conclude this chapter by briefly addressing three questions: why did this situation ever happen? what lessons are there? and why did I seek reinstatement and not a financial settlement? My explanation for the ordeal points to a mixture of reasons. It is a story of what happens when a manager deeply committed to an autocratic style of management meets someone with a different worldview. First, what happened can be understood in part in terms of organisational politics, some of which can be explained by referring to new public management or a neoliberal mindset.

As Nussbaum (2013, 164–5) observed, understanding some prominent human tendencies to engage in deliberately cruel and bad behaviour towards others requires thinking about political emotions such as anxious competitiveness and pride, and cultures that shape and sustain those tendencies. This is not to be explained simply by reference to thoughtlessness, neglect, or even fear-tinged suspicion; it also involves 'some active desire to denigrate or humiliate'. This tendency she argues is central to in-group discrimination. Even when we manage to develop capacities for genuine concern, 'insecurities make us prone' to 'the subordination of others as people learn to split the world into favoured and stigmatised groups'.

Ultimately, I understand that what happened is illustrative of what happens when practical wisdom and good judgment are absent. By practical wisdom, I refer to the practice of listening to good counsel (and the capacity to determine who can offer it). I refer to the capacity to judge what is the right, what is a good thing, and the ability to judge what is false and malicious from what is true and decent. The lack of this capacity on the part of some key managers and the tendency to act 'as if' everything is functioning well, to my mind helps explain why this unfortunate series of events took place. Stanley Cohen (2001, 64) offers

some insight into this in his account of certain kinds of social relations. Writing about environments in which control by the more powerful is exercised by manipulating loyalty through fear and collusive forms of denial which works to encourage mistreatment, he describes how at 'a subterranean level everyone knows what is happening, but the surface is a permanent "as if" discourse'. The social group is drawn together in a web of denial which frees members from the inconvenient truth or 'troubling recognition' of wrongdoing while the more powerful get to 'shrug off the responsibility' for the harmful effects of their action, thereby ensuring legitimacy for further wrongdoing.

Secondly, with regard to the lessons learned from this experience, I note that since the judgment many people have offered advice on how to avoid a repeat of this scenario. The biggest lesson for employers is simple: employers and managers need to ensure that the lawful processes put in place for redundancy are not abused.

Thirdly, I chose reinstatement rather than taking the money – up to $1,994,284 – because I did not believe managers ought to be able to use taxpayers' money to buy themselves what they want. And, while a judgment vindicating me plus a lot of money may have assuaged my hurt, returning to that same workplace and being present within that university was an important public statement and a reminder of what happened. It was my own way of reclaiming the university back – at least symbolically. My work does matter to me, which is not to suggest that I have no life beyond my work, but that researching, writing and teaching are critical to who I am.

In conclusion, the final lesson relates to institutions and organisations committed to the idea and practice of securing justice – in my case it was a good judicial system and the NTEU. Specifically, my experience points to the value of a good union, to the way they are integral to our democratic culture and importantly to the value of individuals in them who know exactly *why* they do *what* they do.

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