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# Dilemmas of defending dissent: the dismissal of Ted Steele from the University of Wollongong

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# Dilemmas of defending dissent: the dismissal of Ted Steele from the University of Wollongong

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*When the University of Wollongong decided to sack a self-style whistleblower, some colleagues and unionists had mixed emotions. Brian Martin explains the difficult processes that followed.*

*This article has been submitted by Brian Martin. The article expresses his views, it does not express a view or statement from the NTEU.*

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## **Abstract [omitted in the published version]**

The summary dismissal of Ted Steele from the University of Wollongong in February 2001 was the most significant case of its type in Australian higher education in half a century. The Steele dismissal case is placed in the context of academic freedom in Australia, the development of the University of Wollongong and Steele's own background. The moves made by key players in the drama - the university administration, the National Tertiary Education Union, the Department of Biological Sciences and Steele - are assessed in the light of possible alternatives. The case shows that rhetoric about free speech and academic freedom provides both risks and opportunities for all parties.

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On 26 February 2001, Ted Steele was summarily dismissed from his tenured post of associate professor in the Department of Biological Sciences at the University of Wollongong, following his contentious public comments about 'soft marking,' namely lower standards especially for full-fee-paying foreign students. The dismissal sparked a huge outcry in academic circles and beyond, where it was widely seen as an attack on academic freedom. The case soon became the most prominent of its sort in Australia since the dismissal of Professor Sydney Orr from the University of Tasmania in 1956, itself a landmark in the history of Australian higher education.

Few cases are as simple as they appear on the surface. The Steele dismissal can be approached from a bewildering range of perspectives, including Steele's personality and history, the accuracy and legitimacy of Steele's public statements, the significance of the soft-marking issues he was raising, the legal validity of the dismissal, the frameworks of academic freedom and whistleblowing, and the academic-industrial context. My attention here is on lessons that can be drawn from this case about how to go about defending dissent. In particular, I focus on the tactics adopted by key participants - Steele, university management, Biological Sciences and the union - and the power of the idea of free speech in the struggle.

Although the Steele events are unique, nevertheless a study of the case can provide insights that are useful to academics in other contexts. Participants in the case pursued their respective goals holding and deploying divergent conceptions of justice and academic freedom. Simply to assert one's claim to justice and academic freedom is inadequate: it is necessary to gain the support of others for action. This is not as easy as it might seem. Despite universal assent to the rhetoric of academic freedom, most parties to the conflict were more concerned with winning specific battles. The Steele case shows how difficult it is to operationalise global concepts of justice and freedom.

I describe the Australian and Wollongong context of the dismissal, then look at Steele's actions and their interpretations and finally assess the strategies adopted by the key players from the point of view of defending dissent.

## **Dissent in Australian universities**

What is the state of dissent in Australian universities? This question is surprisingly difficult to answer. There is quite a lot of dissent expressed in both professional and public forums, with no difficulties anticipated or encountered; at the same time, there is quite a lot of suppression and inhibition of dissent. There are a number of ways to approach the issue.

One approach is to look at policies and official statements about academic freedom. But since academic freedom is widely considered to be a 'good thing,' at least in theory, no one wants to be seen to be opposed to it, so rhetoric often tells very little about what is actually happening. Similarly, scholarly discourses on the principles of academic freedom can be conceptually illuminating but may bear little relation to practice.

A second approach is to use plausibility arguments. For example, as universities become more entrepreneurial, it is plausible that academics would be less inclined to criticise sources of external funding since this might jeopardise their prospects of getting grants, and that administrations would not be pleased when staff make such criticisms. As universities become more managerial, it is plausible that criticisms of university management become more risky.

Tenure, it is often claimed, is essential to academic freedom because academics will be afraid to speak out unless they have job security. This seems plausible but, surprisingly, the argument seems never to have been systematically tested. A counterargument is that in their desire to gain tenure, academics learn how to keep a low profile, so much so that by the time they have tenure, few of

them have any desire to speak out (Martin, 1984; Schmidt, 2000).

The weakness of plausibility arguments is that they are just arguments. Evidence is needed.

The third approach to assessing the state of dissent is to analyse documented cases. Lionel S. Lewis (1972, 1975) analysed all contested dismissals of academics reported in the *Bulletin* of the American Association of University Professors (AAUP) from 1916 to 1970. In 217 cases, incompetence in teaching or research was mentioned in only 13: merit was almost never the issue, partly because incompetent academics would be less likely to contest their dismissals. Prior to 1944, the main factors were interpersonal and financial problems; from 1945 to 1962, external coercion was most significant; after that, the key factor was administrative pressure to get rid of ideological embarrassments. This observed reduction in external threats to academic freedom and increase in threats from university administrations is compatible with the frequently expressed argument in Australia that university managers are an increasing threat to dissent.

The AAUP data are far from definitive. Lewis notes that for every case reported in the *Bulletin*, three dismissal cases were settled informally and an unknown number were never even reported to the AAUP. In Australia, though, there is nothing comparable to AAUP data. Unlike the AAUP and the Canadian Association of University Teachers, the National Tertiary Education Union does not have an academic freedom committee - it did have an academic freedom working party for some years - nor a tradition of independent investigation and reporting on complaints. Therefore, while the NTEU vigorously defends academic freedom and there is no evidence that Australian academics are more constrained than others, in Australia information about dismissals or academic freedom complaints is not available in any systematic form. (A voluntary organisation, the Council for Academic Freedom and Democracy in Australia, modelled on its British namesake, existed for a few years in the early 1980s. It did not fill the data gap.)

Lacking systematic data, a fourth way of assessing the state of dissent is through prominent cases, especially those that receive significant coverage in the mass media or through bulletins or journals. Though such cases are atypical, by attracting attention they serve to polarise and crystallise attitudes towards dissent and to provide exemplars used by both administrations and dissidents in later struggles. A few prominent Australian cases are listed here.

- Sydney Orr, professor of philosophy at the University of Tasmania, was dismissed by the Council for sexual misconduct in 1956 after taking a leading role in public criticism of the administration that led to a royal commission (Eddy, 1960; Polya and Solomon, 1996; Pybus, 1993).
- Frank Knopfmacher, lecturer in psychology at the University of Melbourne, was denied appointment as senior lecturer in philosophy at the University of Sydney in 1965 following attacks on his anti-communist views (Martin et al., 1986, p. 166).
- Clyde Manwell, professor of zoology at the University of Adelaide, survived a five-year attempt to dismiss him beginning in 1971 after he wrote a letter to a newspaper criticising pesticides (Martin et al., 1986, pp. 87-122).
- Jeremy Evans, senior lecturer in the Human Sciences Program at the Australian National University, in 1979 was recommended to be denied tenure - a decision seen as an attack on the program - but eventually gained tenure following a long struggle (Martin, 1997, pp. 3-16).
- Michael Spautz, senior lecturer in commerce at the University of Newcastle, was dismissed by the Council in 1980 following his public criticisms of Alan Williams, professor in commerce, and many others (Martin, 1983).
- David Rindos, senior lecturer in archaeology at the University of Western Australia, was denied

tenure in the early 1990s after he reported sexual misconduct in his department (Legge, 1995; Martin, 2002).

These and other cases (Ellingsen, 1999; Martin et al., 1986; Patience, 1999/2000), reveal that dismissal of a tenured staff member is only one of many methods to attack a dissident scholar: denials of tenure and appointment, plus various forms of administrative harassment, are probably more effective since they are harder to contest. Only in the Spautz and Steele cases was the public expression of views the primary stated reason for administrative action.

There is much more that can be learned from such cases, but they do have an important limitation: they give little indication of the level or risk of dissent for the bulk of academics who do not seek or gain publicity.

A fifth way of assessing the state of dissent is by seeking informed judgements from those who have their ear to the ground. A few individuals, such as some union officials, have impressive networks and learn a lot about what is going on. For example, Clyde Manwell, after receiving publicity in his battle against dismissal, was contacted by more than a hundred individuals with stories of suppression. As a result of my own studies (Martin et al., 1986; Martin, 1997), I might be considered to be in this category. The main messages from such individuals are that (1) there is an enormous volume and diversity of struggles to express and suppress dissent, from the petty to the dramatic, far more than reaches the public eye, (2) many individuals are afraid to speak out because of possible reprisals or damage to their career, and (3) rhetoric about academic freedom bears little relation to what academics have to contend with in their work.

## Background to the case

Ted Steele has a long history as a dissident biologist. He proposed a molecular biological mechanism for environmentally induced changes in certain organisms to be passed on to progeny, and expounded this idea in a book more than 20 years ago (Steele, 1979). Much of his time since then has been spent pursuing this fundamental idea, through experimental work, theoretical elaboration and seeking acceptance from other scientists, including confronting critics and attacking researchers who did not give him what he thought was suitable acknowledgment.

That environmental influences could affect genetics has long been rejected in biology. Steele was like a bull battering at the gates of the establishment.

Born in 1948, Steele attended the University of Adelaide and later continued his research in Canberra, Canada and England. In the early 1980s, he attempted to build a career in London, but resistance to his ideas forced him to return to Australia. He took a lectureship at the University of Wollongong in 1985, where he was able to continue his work and quickly rise to the position of associate professor. His struggles to have his biological ideas recognised were reported periodically in the media (Leech, 1989; Pryor, 1998; Ragg, 1988) and presented in a mass-market book (Steele, Lindley and Blanden, 1998).

The University of Wollongong, originally a division of what was later the University of New South Wales, became an independent university in 1975 (Castle, 1991). Wollongong, with a population of a quarter of a million and located some 80km south of Sydney, is Australia's most working-class city, being dominated by the steelworks at Port Kembla. The university was one of the last wave of 'old universities' established before the Dawkins reforms of the late 1980s; others set up in the 1970s, including Griffith and Murdoch, were designed from scratch on innovative interdisciplinary models. Wollongong University, though, had a more traditional disciplinary structure and an applied orientation shaped by its origin in technical education and by the presence of the steelworks.

While most other Australian universities were relatively stable in size during the 1980s, Wollongong University's enrolments trebled, stabilising in the 1990s at over 10,000. Ken McKinnon, during his long tenure as Vice-Chancellor, promoted growth and astutely took advantage of opportunities. McKinnon was seen by many as very directive, if not dictatorial, but because so many of his judgements worked well for the university for many years, there was not much resistance. Admittedly, during a period of growth it is easier to keep constituencies happy, but many felt that part of the reason for the increase in resources was McKinnon's openness to initiatives. As well as growing in size, the university climbed in research performance, from quite low among the 19 pre-Dawkins universities to one of the top 10 among the 35+ universities at the turn of the century. The university's reputation gradually grew as well. It was rated very highly in the quality rounds in the early 1990s in which universities were grouped in bands on the basis of teaching and research. McKinnon's deputy, Gerard Sutton, became Vice-Chancellor in 1995 and pursued the same sort of entrepreneurial path, for example by promoting industry partnerships and aggressively pursuing overseas students.

On campus, the dramatic improvement in the university's standing was usually attributed to good management, especially of research. Another explanation is that the many up-and-coming staff hired in the 1980s would be reaching the prime of their careers a decade or two later. The university had the advantage of avoiding the turbulence of the late 1980s merger frenzy, having weathered an earlier 1982 merger with the adjacent institute of education.

It was in this context of a university growing in size and prestige that Steele also gained in rank and visibility. He gained a reputation on campus not only for his biological heterodoxy but for confrontational stands on other issues. In 1991, when a number of staff publicly questioned the Vice-Chancellor over financial management, including in relation to the Illawarra Technology Corporation, the university's commercial arm, the two most vociferous combatants were Steele and historian-of-science John Schuster (Gosling, 1991).

The arrival of email on campus in the early 1990s opened up a new audience for Steele. The university's email system allowed the sending of messages to various groups, including 'all academic staff' and 'all general staff' as well as 'forums and debates.' The latter was a suitable venue for controversial ideas and even letting off steam, but Steele regularly violated the email guidelines in his postings on the 'all' groups, leading in one instance to his email account being temporarily suspended (Illing, 1995) and to warnings on other occasions (Tydd, 2000).

In Steele's own words, his 'vigorous and vituperative interchanges on the e-mail' covered a range of topics, including 'space allocations, library cuts, unethical collegial behaviour, promotional barriers, executive obstacles on overseas/conference travel, funding cuts, parking fines, senseless executive edicts on the pasting of student notices, etc.' (email, 23 February 1995). One of his hobby horses was the appointment of what he called 'Mickey Mouse professors.' He claimed that poorly qualified candidates were being appointed to full professorships and that senior management was choosing entrepreneurs and insiders over those who had better scholarly records. For example, in a 22 December 2000 email to all staff, Steele stated, among other things, that

The "Professor" title is so associated with derision that it would make that great humanist of good will Walt Disney turn in his grave. It has become so bad, and VC Sutton is so drunk with power, that the place behaves (to those outside the "Wollongong Loop") much like a tin-pot South American dictatorship in a state of academic degradation metaphorically akin to contemporary Russia/Eastern Europe/Cuba.

Such allegations triggered considerable debate, including aggrieved and humorous as well as measured contributions.

Some who sent Steele a personal email on a topical matter were surprised and annoyed to find it copied to the entire campus accompanied by Steele's commentary. While some staff applauded his periodic email attacks on senior management, many others found his behaviour obnoxious.

Many staff preferred to make their public stands as members of the union, which was strong and sometimes militant. In the conflictual process of trying to reach an enterprise agreement in 1999, academics successfully held first a one-day strike, then a two-day strike and finally a three-day strike, an exceptional level of industrial action for academic staff.

Steele, though, maintained his union membership only some of the time. When Steele attacked the union in an email to all staff for failing to support him, union branch president Mike Morrissey (email, 2 December 1998) returned fire with a full rebuttal of Steele's account. The branch executive found it particularly aggravating to feel obliged to support Steele after he conspicuously drove through picket lines.

Thus the stage was set for the drama of 2001. Senior management, especially Vice-Chancellor Sutton, were chuffed with the university's outstanding performance and seeking ways to improve still further. The university had recently been joint winner of the 'University of the Year' award two years in a row. Based on specific categories - in Wollongong's case, these were preparing graduates for the e-world and outstanding R&D partnerships - these awards were regarded cynically by many in the Australian university community but given banner treatment by Wollongong's administration. Although the university's rising reputation was deeply treasured by senior management, elsewhere on campus feelings were more mixed, with some staff doing well personally but all struggling with the cutbacks and pace of change that afflicted all of Australian higher education. Steele was one of most visible critics of the administration, admired by some but regarded by others as an embarrassment. An enterprise agreement had been reached after an incredibly bitter struggle.

Although Steele was a thorn in the side of the administration, he was by no means the only one: there were several other staff who made frequent and passionate contributions on university politics via the email system. Nor was Steele the most effective critic. Undoubtedly several of the union officials who contributed to public debate (not to mention prodigious behind-the-scenes work) were more potent, because they were better informed and more cogent.

## The dismissal

At the beginning of 2001, there was considerable media coverage of the problem of 'declining standards' and 'soft marking.' A number of factors seem to have contributed to this issue becoming prominent in the previous decade. Staff morale at nearly all universities had plummeted, as lack of extra funding for pay rises led to loss of staff and higher workloads, while government accountability measures increased administrative demands. University managements had gradually dismantled collegial decision-making structures, replacing them with top-down systems, further alienating staff (Bessant, 1995). This made the ground fertile for public criticism of universities (Biggs and Davis, 2002; James, 2000; Lowe, 1994; Maslen and Slattery, 1994), as there was a receptive audience and plenty of disgruntled staff, a few of whom were willing to speak publicly.

'Soft marking' referred to the giving of higher marks than would have previously been the case. Special attention was given to easier marking of full fee-paying students. As well as reflecting genuine concern, the issue of standards was a potent signifier of changes in universities that many found problematical: higher student numbers, more overseas students, an increased commercial orientation and a general sense of academic crisis and decline. Rather than talk of a change in expectations with the advent of mass higher education, the evocative expression 'soft marking' suggested something shonky was going on.

Simply by talking to a range of academics, it is easy to accumulate anecdotes about declining standards and abuse of procedures, for example pressures to pass more students or to give special consideration to particular ones. Relatively few academics are willing to speak publicly about such

matters, though there are periodic reports of some who do, including ones who claim to have been victimised as a result (Armitage, 1996; Aubert, 1993; Johnston, 1995; Maslen, 1998; Senate Select Committee, 1995, pp. 96-103).

The trigger for the media attention in early 2001 was an advance report of a study published by the Australia Institute based on a survey of social scientists, some of whom claimed that standards were being lowered due to the emphasis on fee-based courses (Kayrooz, Kinnear and Preston, 2001). University managements denied there was a problem. Steele jumped into this furious debate with a dramatic claim: that the marks of two honours students in his department had been boosted (Bransdon, 2001a, b; Contractor, 2001a, b).

The students in question were two of Steele's own, in 1997 and 2000, only one of whom was a full-fee-paying overseas student. The Department of Biological Sciences denied Steele's claims, saying that it had followed its rigorous assessment procedures for honours students to the letter in both cases, averaging marks from three thesis examiners and including marks from course work and other assessment components.

In some reports, Steele was quoted saying that he had been instructed to raise the marks (Contractor, 2001a, b). But this didn't make sense, since he was not one of the markers. The crux of the matter lies in two different ways of conceiving the marking process. Of the three examiners of a student's thesis, one was external. Steele thought that the mark from the external examiner - with which he concurred - was definitive. He appeared to believe that he and the external marker knew what the student should really get, and that any other result was tantamount to 'upgrading.'

Every other academic in the department, on the other hand, supported the result obtained by following procedures. Indeed, the two students could have legitimately appealed if Steele's views had prevailed and normal procedures had not been followed. Biological Sciences staff pointed out that Steele had raised no objection to the procedures when they were reviewed in 1999-2000. They also pointed to documents showing that Steele was acting chair of the department examiners' meeting in 1997, undermining his claim that he was instructed to raise a mark in this case.

The university's rules require that external examiners for masters and PhD theses not have a close personal or professional relationship with the student's supervisor. These rules, though, do not apply to honours theses, otherwise the external examiner in both cases, Professor Bob Blanden from the Australian National University, would have been ruled out given that he was a collaborator of Steele's (Steele, Lindley and Blanden, 1998).

Claim and counterclaim about upgrading were exchanged through the campus email system, with press reports drawing on and feeding the email debate (Contractor, 2001c; Failes, 2001). For example, after the head of Biological Sciences, Mark Walker, wrote a letter to Steele requesting that he publicly correct his claim that he had been instructed to increase students' marks, Steele responded on 31 January in an email to all staff on campus plus various journalists and others (Tydd, 2001).

Steele copied one of his emails about the matter to the state Ombudsman, among many other recipients. The Deputy Ombudsman, Chris Wheeler, felt obliged to take this as a formal submission and, after assessing the evidence, gave reasons for declining to initiate a formal investigation. Basically, he found no evidence whatsoever of upgrading (Sewell, 2001a). With circulation of the Ombudsman's report, Steele was beginning to lose credibility outside Wollongong, just as he had previously lost credibility on campus.

Then, out of the blue, after the issue seemed to have died down, Steele was summarily dismissed on 26 February, with a letter delivered to his home at 5.15pm. At the same time, the lock on the door to his university office was changed. The administration put out a media release in which the Vice-

Chancellor stated that Steele's dismissal 'was necessary in the light of Associate Professor Steele's knowingly false allegations undermining the essential fabric of the employment relationship and puts at serious risk the good name of the university' (Adie, 2001; Contractor and Noonan, 2001).

On campus, the response was muted. Only a few, most of them familiar contributors, commented or protested on the email system (I was one of them). But beyond the university, the dismissal turned Steele into a martyr, with numerous commentators criticising the dismissal (Anonymous, 2001a; Jackson, 2001; Lowe, 2001; McGuinness, 2001) and none defending it. In most people's minds, there was no doubt that the dismissal was a reprisal for speaking out. Whether Steele's claims about soft marking were correct was not the central concern and in some lengthy treatments not even discussed (Rothwell, 2002).

This raises the issue of 'the right to be wrong.' Does academic freedom apply when the academic has the facts wrong and refuses to back down? Context is crucial, since 'the facts' are rarely as clear-cut as textbooks suggest. Even setting aside postmodernist defences, if free speech is guaranteed only to those who make no mistakes, then no one can risk speaking out. History reveals many examples, from women's rights to continental drift, where minority views - sometimes dismissed as outlandish - were later widely accepted. So although Steele's claims about upgrading were rejected by every one of his colleagues, this does not by itself refute his claims, nor - and more importantly - does it mean he had no right to express them.

But what about the reputation of the university? Again, if speaking out is only safe when reputations are not damaged, then no comment is safe. Arguably, a university's reputation should be robust enough to handle vocal criticism and the best defence against unfair attacks is a patient, careful refutation of incorrect claims, causing those who make unsustainable criticisms to lose credibility. Thinking and sentiment along these lines seem to lie behind the near-universal condemnation of the dismissal. Furthermore, in some people's eyes, the dismissal gave Steele's claims greater credibility, along the lines of 'If he's so wrong, why does he need to be silenced?'

## Options

The moves made by various players in the aftermath of the dismissal can be assessed in various ways, crucially depending on their goals. Here I briefly describe actions taken and assess some alternative actions.

The university administration took a procedural approach to the issue, claiming it had the right to summarily dismiss Steele and giving relatively little comment beyond this, responding only briefly and occasionally to the voluminous commentary in the media. This is a fairly standard administrative path which can work to limit adverse publicity, at least when the issue dies down before long.

If, instead of summarily dismissing Steele, a formal charge of misconduct had been laid and an investigation committee set up, this might well have led to adverse publicity for the university, assuming that Steele would go public arguing over procedures as well as content, a reasonable presumption going by his past behaviour. Summary dismissal avoided this likely prospect of a lengthy public struggle. The advantage of a misconduct inquiry, though, would have been that dismissal, if it had eventuated, would have been seen as more legitimate, given that proper procedures were seen to have been followed.

The summary dismissal, in contrast, was widely seen as illegitimate, even by those who did not support Steele or his allegations. The months of adverse publicity arguably were more damaging to the reputation of the university than a misconduct inquiry would have been. The continuing media attention was bad enough on its own, but it had the additional effect of turning Steele's case into an

emblem for the university, with the dismissal often raised when the university was mentioned. Furthermore, other cases at Wollongong gained additional attention as they were pegged to the Steele case:

- the denial of tenure in 1994 to management lecturer Gail Graham who claimed she was under pressure to pass full fee-paying students (Graham, 2001);
- the dismissal of geography lecturer John Formby in 1998, discussed in a campus-wide email (29 August 2001) by departing lecturer Laurie Brown, who explicitly made a link to the Steele case;
- the denial of an honorary fellow position to anti-nuclear activist Jim Green, a recent doctorate in Science and Technology Studies, linked in an article to the Steele case (Perrot, 2001);
- the termination of the contract of education lecturer Grant Rodwell, linked in articles to the Steele case (Duffy, 2002).

In the aftermath of the dismissal, in the face of enormous adverse publicity, what alternative did the administration have? This was my recommendation:

Public relations gurus now often recommend to corporations that come under attack to "embrace their problems." For example, if a running shoe manufacturer is seriously attacked - rightly or wrongly - for exploitation of third world workers, denial and stonewalling only prolong the bad publicity. A more astute response is to accept the organisation is forever linked with the (alleged) problem, take energetic steps to rectify the (alleged) problem and to make a name for itself as a leading reformer.

Via the Steele case, the University of Wollongong is now associated worldwide - rightly or wrongly - with denial of academic freedom. This could be turned around by admitting matters had not been handled well, reinstating Steele, setting up an open and independent inquiry into marking procedures and standards, and thereby becoming known as a university that is able to learn from mistakes, is open to criticism and is a haven for dissent. (Martin, 2001).

This option remained, though, one of the roads not taken.

From the point of view of the National Tertiary Education Union (NTEU), the dismissal was a direct attack on the enterprise agreement between the administration and the union, under which clause 61 specifies that before taking disciplinary action for misconduct, a staff member must be formally charged and an investigation committee formed to assess the charges and make a recommendation. Union officials said that clause 59, which allows dismissal without notice for serious misconduct and was cited by the administration to justify the dismissal, could only be invoked after the process specified in section 61 had been followed. Indeed, if summary dismissal was possible without a formal charge and investigation, then formal protection of academic freedom across the country would be meaningless.

The NTEU adopted a three-pronged strategy (<http://www.nteu.org.au/campaigns/steele>). First, it carefully considered legal options - there were half a dozen possibilities - and decided to launch a case in the Federal Court that the enterprise agreement had been breached. This was successful in the first stage when the judge ruled in the union's favour (Contractor, 2001d; Duffy, 2001; Lawnham, 2001; NTEIU v University of Wollongong, 2001). The administration then appealed, generating a resurgence of adverse comment (Anonymous, 2001b).

The second prong of the union's strategy was a publicity campaign involving media releases and circulation of information. One highlight of the campaign was an on-line petition eventually signed by nearly 5000 academics across the country, serving to alert academics to the issues as well as put pressure on the Council, the university's governing body. Another was a protest, with many participants wearing academic gowns, outside the Federal Court on 5 July 2001, the day the initial

case began.

Lobbying Council was the third prong. Two union members were already on Council; other members were approached informally as well as being given packets of relevant information. Although informed observers said the union nearly had the numbers to challenge the Vice-Chancellor, for the most part Council went along with the Vice-Chancellor's line.

The union's task was delicate given attitudes in the Wollongong branch. A few members - notably but not only from Steele's department - were adamantly opposed to any action that would appear to provide support to Steele as a person. The motions passed at the branch focussed on violation of the enterprise agreement, mentioning the Steele case only as a necessary link. Even so, a few individuals opposed these motions. That said, all parts of the NTEU campaign were supported by both the national executive and the Wollongong branch.

In my view, in 2001 the union's strategy was the most effective of any of the key players. Combining a legal, publicity and lobbying strategy has great potential, since each prong can reinforce the other. What else could it have done? From my studies of similar cases (Martin, 1997, 1999), mobilisation of support is the most effective strategy for challenging a large organisation. Hence, my recommendation was to expand the scale of the publicity campaign, for example by putting out a brief email bulletin to union members nationwide every few weeks. This would have kept supporters up to date, mobilised further backing and maximised the potential for increased pressure on the Wollongong administration and Council via personal contacts. It would also have alerted other university administrations to what might be in store should they follow the Wollongong road.

The case has been sufficiently prominent to be a topic of regular conversation. In talking to people from other universities, I have often been asked about the Steele case, and others from Wollongong have reported the same experience. An email bulletin - or some equivalent level of regular publicity - would have sensitised staff across the country to the issue even more, making the pressure on the administration intense.

Consider next the plight of the Department of Biological Sciences. It has long had a good reputation on campus and beyond and is highly productive in research. Its honours assessment procedures could be a model for many other departments. But its reputation was damaged when Steele made serious allegations, reported in the media, about its procedures and standards; these were largely left unanswered. Then Steele was dismissed, turning him into a martyr without the opportunity for department staff to present their views, which would have been possible in a misconduct hearing. The Vice-Chancellor told me that he had dismissed Steele for the good of the department and its remaining staff, but not all of them welcomed this form of help; certainly they were not consulted.

Department members took a few steps to present their perspective. Prior to the dismissal, all other academics in the department published a letter describing its assessment procedures (Whelan et al., 2001). As well, the department held a meeting on 17 January in an attempt to clarify points of view about the marking issue; Steele attended and was allowed to tape the meeting (Contractor, 2001c). After the dismissal, the only noteworthy departmental initiative was providing refutations of Steele's claims on the department's website ([http://www.uow.edu.au/science/biol/hon\\_assess/](http://www.uow.edu.au/science/biol/hon_assess/)) - one of the few attempts anywhere to provide detailed documentation of the marking issues under dispute.

What more could department members have done? My general recommendation was to adopt an active media strategy, presenting their perspective rather than relying on the administration's few media releases. In particular, in the first few months after the dismissal, I think it would have been powerful to release a statement saying that Steele should be reinstated but then charged with misconduct - and to make available a short summary of a formal complaint to this effect. This could have positioned the department as a defender of dissent against arbitrary penalties while highlighting its own case against Steele's allegations. But some department members' animosity towards Steele

was too great for this option to be pursued. Without agreement of all the academics on a strategy, it was hard to take any action. Furthermore, some felt that the media would report only 'outrageous claims,' not that proper assessment procedures had been followed.

Finally, what of Steele himself? It is easy to blame those who speak out for 'bringing it on themselves'; that is not my intent here. Steele had a point of view about the marking of two honours students and expressed it vehemently and persistently. What he did not do was acknowledge that other views might be legitimate or that a difference in perspective was involved. This might have eased tensions but it was not Steele's approach on this occasion. He did not win the support of his colleagues when, prior to the 17 January meeting, he threatened legal action should matters determined at the meeting be damaging to him.

After he was dismissed, Steele kept a low profile, featuring in a few news stories but largely eschewing email broadcasts to staff (which can easily be sent from off campus), except for a few occasions in which his content was low key and carefully expressed. This uncharacteristic reticence was probably wise and certainly avoided inflaming the situation further, especially while the union was pursuing a court case that could lead to his reinstatement.

Most employees who come under attack for expressing their views, or indeed for other reasons, suffer enormously. Often their careers are destroyed and they have huge expenses, with health and relationships at serious risk. Most of all, their understandings of the world and their place in it can be overturned, with loss of meaning being devastating (Alford, 2001; De Maria, 1999; Glazer and Glazer, 1989; Miethe, 1999). Surviving these challenges is difficult, to say the least. Reports suggest that Steele's ordeal is typical (Sewell, 2001b); he informed me directly (email, 27 January 2002) of the 'massive impact' of the dismissal on his career and personal life.

## **Assessment of round one**

A key lesson from the saga is that the idea of academic freedom - or, more generally, free speech - is a powerful mobilising tool. This presents both risks and opportunities for everyone involved.

The risk for administrations is that summary dismissal is seen as an attack on free speech. Whatever the status of academic freedom 'in reality,' belief in its importance can be a powerful force. The opportunity for astute managers is to portray a university as a defender of free speech. This is easiest when attacks come from the outside. But inside criticism can also be made into a source of strength. By both tolerating or even fostering dissent, and publicising its toleration, university managers can portray themselves as enlightened and open. But despite the opportunity here, no Australian university stands out as a haven for dissent, perhaps in part because the government's higher education policies foster conformity among institutions in pursuit of funds rather than intellectual debate (Marginson and Considine, 2000),

For unions, there is a risk in sticking to the letter of procedures and agreements and getting caught up in lengthy and expensive investigations and court cases. Using the rhetoric of academic freedom and free speech offers a way of applying pressure that may be just as effective in gaining results and far more effective in building support for the union. In many cases, it is vital for the union to be seen to support the right to speak out but not necessarily what the dissident is saying. The more often such support is provided, and the greater the diversity of views protected, the more convincing and effective such advocacy will become.

For colleagues of vocal dissidents, leaping to their defence can be risky, with reprisals a possibility. But holding back from supporting someone portrayed as a dissident, even when there are good reasons to be cautious, also carries a risk, namely being painted as an enemy of free speech. One way

to get around this is to support the right to speak out, while being clear that this does not extend to what the dissident says. To be effective, colleagues need to speak out themselves. This is not easy given that many scholars look down on forays into the media (except, sometimes, concerning strictly professional achievements), while administrations provide little encouragement. But until larger numbers of academics begin speaking out on issues of concern, the agenda will be set by those few who do.

It is an even greater challenge to determine when to defend a colleague's outspokenness (even if one does not support what is said) and when to oppose it, including by such steps as filing a formal complaint. The cloak of 'academic freedom' can be draped over both public interest disclosures and spiteful personal abuse; distinguishing the two is not always straightforward.

For those expressing challenging views, the idea of academic freedom or free speech can be invoked to deter or counter an attack, especially by mobilising support. But there is also a risk in too expansive an interpretation of the 'right' to speak out. Does this extend to public criticism of one's colleagues or students? Does it include abusive language? Does it cover release of confidential information? There are no simple answers here; both the circumstances and the relevance of other principles are crucial. The limits of free speech are decided less by abstract argument than by the way actual cases evolve.

Free speech deserves protection even when those who exercise it are rude, intolerant and abusive. But when dissidents are polite - assertive rather than aggressive - it is less awkward for others to support them, as there is less confusion about what is at stake, namely the issues and speaking out about them rather than personalities. Of course, some people consider speaking out a form of rudeness itself, a problem faced by all dissidents, but nonetheless firm politeness has much to offer. Furthermore, a dissident's willingness to acknowledge mistakes, or at least the potential for error, makes it easier for others to tolerate dissent.

When debates are carried out in the mass media, responding to unfair claims may not be easy. Only some claims are considered newsworthy and the nuances of issues are often lost. Academics who are used to checking every detail in their scholarly articles often feel uncomfortable in relying on journalists to convey their point of view. Yet responding in other forums seldom has the immediacy and impact of the mass media.

Most academic journals are far too slow and cautious to deal effectively with contentious topics in a timely fashion. Some magazines of current affairs and opinion are far better, while email and the web provide great opportunities for vigorous debate. But these outlets do not operate independently of the mass media. Journalists are always on the lookout for good stories, which means that academics cannot avoid the impact of media treatments.

Hence, rather than trying to control media comment by staff, as some administrations have tried to do through regulations, an alternative is to promote greater media awareness. If more staff know how to present their views to and through the media, then they will be better able to enter debates themselves. As well, by becoming more knowledgeable about how the media operate - for example, the role of news values in shaping what becomes a story - academics, students and members of the public will be better able to interpret the significance and limitations of media stories. Such a suggestion, though, goes completely against conventional approaches of public relations and spin followed by powerful organisations. The more that image is managed, the greater the threat from unauthorised comment. There is a long way to go before speaking out is so commonplace that there is no need to talk about freedom of speech.

## **The next round**

The year 2002 saw a new round of activity by all parties, with some significant differences from the first year. The union had contested the dismissal in the Federal Court, which ruled in August 2001 against the university administration. The administration then appealed to the full bench of the court. The case was heard at the end of February 2002. Comments of the judges in the courtroom, highly unfavourable to the administration, received prominent media coverage:

The University of Wollongong gave academic Ted Steele less natural justice than a murderer could expect when it sacked him without warning a year ago, a Federal Court judge said yesterday.

Hearing a Full Bench appeal by the university against an earlier judgment that the university had erred when it sacked Dr Steele, presiding judge Justice Murray Wilcox said he was shocked by the behaviour of the university.

"I find it remarkable that a university, of all institutions, of all employers, an institution that we've been brought up to regard as open and liberal and fair should seek to exercise the power to sack somebody for discipline reasons without giving notification to them. I find (it) extraordinary, I have to say," Justice Wilcox told the hearing.

"Look, even murderers are entitled to be heard in their defence.

"The suggestion that an academic, whatever his or her offence, is not allowed to make a defence, for a university to put that proposition, I repeat, I just find it a shocking proposition." (Contractor, 2002a, p. 1; see also Lawnham, 2002).

A month later, the court handed down its decision in favour of the union (Contractor, 2002b; University of Wollongong v National Tertiary Education Industry Union, 2002). However, there were difficult negotiations ahead concerning Steele's return to work. In particular, could Steele now be charged with misconduct and put through the processes that could lead to dismissal? Negotiations began between the administration and the union about these and other matters. This led to some further twists in the saga. The administration, after some resistance, announced that Steele would be reinstated, with full back pay and allowances, and put the onus on the union to choose a method by which the original allegations against Steele would be heard. This was the first significant voluntary concession by the administration since the dismissal and perhaps signalled a change in its previous hard-line stance. Then, somewhat later in the negotiations, the administration charged Steele with misconduct, causing a new uproar. After a hearing before the Australian Industrial Relations Commission, the administration continued negotiations. Some interpreted the misconduct charges as a ploy in the negotiations.

In the public arena, some new approaches were displayed. In a change from his previous low-profile approach, Vice-Chancellor gave an extended interview with the local newspaper, offering an upbeat account of the Steele affair (Sewell, 2002a). He claimed that his handling of the matter had not damaged the university's reputation.

With Steele's impending reinstatement, members of the Department of Biological Sciences decided to go public with their concerns. In major stories in local and national newspapers, they rejected Steele's claims about upgrading and defended the department's marking procedures. Every single academic member of the department signed a letter which, among other things, said 'As the staff who are as yet undefended victims of his [Steele's] accusations we request that all parties work quickly towards an agreement on a process that gives us the opportunity to have the facts heard, our reputations repaired, and our past, present and future students cleared.' (Sewell, 2002b; Lawnham, 2002b, 2002c). Department members decided to go public to defend their interests, fearing that if there was no inquiry into Steele's allegations, the department might never have a suitable forum to be vindicated.

It seemed likely that Steele would not return to his position. Though formally reinstated as of 22 April 2002, he was deemed to be on study leave - as he had been when dismissed a year earlier - and

did not come on campus. However, his presence was once again felt through email. After he received misconduct charges, on 10 May he sent emails to everyone on campus who had signed the union's on-line petition, laying out the facts as he saw them and asking supporters to contact members of Council.

The Vice-Chancellor, Biological Sciences and Steele thus were more willing to present their views than before. In contrast, the union took the path of negotiation, giving publicity a low priority compared to the previous year. At a union branch meeting on 18 April 2002, Carolyn Allport, national president of the union, was present. Congratulating the branch on the Federal Court findings, she said that the union was negotiating with the university administration to obtain a satisfactory outcome regarding Steele. Members of Biological Sciences were persuaded to withdraw a motion in favour of a misconduct inquiry into Steele's allegations, but not all that happily. Most other members went along with position of the union officials handling the case. The basic message was 'trust the union negotiators.' The problem with this was that the negotiations were carried out in secret, meaning that staff were left out of the process. The union's priority on litigation and negotiation meant that opportunities to encourage a wide process of debate about academic freedom, at Wollongong and other universities, were lost.

On 5 July 2002, a settlement was announced between Steele, the administration and the union. It stated, 'All legal and disciplinary procedures have been terminated as a result of the settlement. The details of the settlement remain confidential and all three parties have agreed to make no further public comment.' (Sewell, 2002c). Whether Steele remained an employee of the university was not stated. One speculation was that he received an early retirement package, allowing him to continue research from home and through his honorary position at the Australian National University. The confidential nature of the settlement precluded any formal resolution of the accuracy of Steele's allegations about soft marking and inhibited any attempt to engage the issues in open debate. If the intent was to discourage media coverage, the settlement was highly effective: coverage in the *Australian* and the *Sydney Morning Herald*, major newspapers that had previously given close attention to the saga, was limited (Lawnham, 2002d). There was not a single comment broadcast on the university's email system following the Vice-Chancellor's email announcement.

One other important forum where the struggle over Steele was carried out was the Council. The union had put a lot of effort into lobbying Council members, but to little avail. The one outcome was a recommendation from Council that the Academic Senate - the highest level representative body of academics - undertake an investigation into assessment practices and procedures. The Senate set up a committee and called for submissions in a process that gained widespread support. Hindsight suggests that this sort of inquiry, rather than dismissal of Steele, would have been an appropriate response to the original claims about soft marking.

Meanwhile, a quiet process of revising and tightening honours marking procedures was under way right across the university. Processes in Biological Sciences may well have been exemplary, as its staff claimed, but the same could not necessarily be said of everywhere else. These changes to honours procedures were, in a number of quarters, colloquially called the "Steele reforms."

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