



## Death of Journalism

**W**e all remember Joe Hockey's sensationalist claims about how if a person fell off a chair at home it would be his or her own fault, but falling off a chair in a restaurant would be an opportunity to sue. Bob Carr, never to be outdone, has now claimed he could sue the Department of Education because he couldn't study a foreign language at school! (*Daily Telegraph*, 3 May 2002).

Perhaps Bob and Joe went to the same school? Bob at least has an excuse, as when he left school he became a journalist. But Joe must have been asleep throughout Torts 101 as he became, so we are told, a lawyer!

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The same day that the *Daily Telegraph* reported Bob's legal opinion on the failings of his school education, their front-page headlines screamed 'Have We Gone Completely Mad'. Reading the article accompanying the headline would lead any rational person to answer 'yes', though perhaps not for the reason the intrepid authors intended.

The article, which took not one but two journalists to write, compared the amounts awarded for criminal injuries compensation for horrendous injury (\$50,000 maximum) with the uncapped damages awarded at common law. This apples and bananas comparison was intended to support another of Bob Carr's broadsides at common law verdicts. Verdicts that, according to Bob according to the *Telegraph*, are often the 'ridiculous' product of litigation brought by 'ambulance chasing lawyers' before 'Santa Claus judges'.

It appears the venerable *Telegraph* didn't realise that their comparison merely illustrated the pathetic nature of statutory caps on VCT awards to citizens the state has failed to protect from

serious crime. Sadly, many of the *Telegraph's* readers may not have noticed the subtle irony of Bob's attack backfiring. Perhaps Bob didn't even notice. Maybe he was too busy trying to find a plaintiff lawyer willing to sue his old school for not offering him that language elective.

Not to be deterred from the shuddering sound of their first dud shot, the *Telegraph* fired again the following day with a headline that screamed 'Santa Clause – Law to Put Brakes on Judge's Generosity'. This second story was cobbled together by not one, not two, but three different journalists (the earlier two must have been on leave completing self-nominations for Walkley's).

The second yarn adequately managed to rehash the previous day's scoop using different words. In the course of this proud effort the *Telegraph* managed to congratulate itself for having 'highlighted' the 'farical system' of the common law. Well done chaps, where would we be without you?

The result was that five journalists collectively contributed to the same dud yarn. The score was five nil in two days.

But this is the type of stuff we have come to expect from the lot that brought us 'Death of Fun'. We now wait breathlessly for the next instalment from these proud protagonists of Bob's propaganda machine.

Speaking of propaganda, have you heard the knee-slapper about Terrence Dickson who was leaving a house he had just robbed by going out through the garage?<sup>1</sup> He was unable to open the garage door as it was malfunctioning and became trapped when the door connecting the garage to the house locked behind him. The owners were on vacation so poor Terrence had to survive on dry dog food and soft drink he found in the garage until he was finally liberated eight days later. Naturally Terry sued and was awarded \$964,000 damages.

This was just one of several similar horror stories recently published in a 'Guest Editorial' in the February edition of *Medicine Today – The Peer Reviewed Journal of Clinical Practice*. The author is the CEO of one of Australia's MDOs (not UMP).

The editorial commenced with the question 'How ridiculous can a lawsuit seem yet be awarded a substantial amount of money in damages?' The author emphasised the ludicrous nature of the legal system with the further claim 'I should emphasise that these are actual jury awards – that is the cases ran to trial and to judgement' and 'As the man in the TV series used to say, "Strange ...but true"'.<sup>2</sup>

The problem is that the examples he cited were not true at all. They were all lifted, almost word for word, from one of those joke e-mails doing the rounds.

One of the medical journal's more astute readers wrote and pointed out that the cases were bogus. Not to be deterred, he responded by recommending that readers wishing to 'more fully research the vagaries' and 'absurdities' of the American legal system should read *Galileo's Revenge – Junk Science in the Court Room* by Peter Huber. Sadly, and for the second time in a month, the

good doctor had been taken in by an uncritical acceptance of propaganda from a very dubious source.

The book *Galileo's Revenge* was written on behalf of the Manhattan Institute.<sup>3</sup> The Manhattan Institute was established in 1978 by William Casey, the head of the OSS during World War II, and later Director of the CIA under Ronald Reagan.<sup>4</sup> It was established as a vehicle to advance the policy interests of the American far right against the growth of US liberal intellectualism. It was financed by donations from corporate America, including insurance, pharmaceutical and tobacco corporations. Among the donors are Aetna, Bristol Myers-Squibb, Dow Chemical, Eli Lilly, Monsanto, Pfizer, Phillip Morris, RJR Nabisco, to mention only a few.<sup>5</sup>

Put simply, the Manhattan Institute, like others of the same genre, such as the Tobacco Institute, is hardly a source of balanced scholastic research and ideas. Nor, indeed, is *Galileo's Revenge* a product of balanced and thorough scholastic research. Indeed, his sources and conclusions were examined in detail in 1993 by Ken Chesebro's American law journal article 'Galileo's Revenge, Peter Huber's Junk Scholarship'.<sup>6</sup> Mr Chesebro concluded:

'Huber's work is so untrustworthy and incomplete that any serious reader would be forced to check every source and do background reading on every topic discussed before being able to evaluate the worth of Huber's analysis and proposals.'<sup>6</sup>

Chesebro went on to observe that: '... the errors in Huber's factual description and legal analysis are so frequent and profound that Galileo would go further to repudiate Huber's book – on Huber's own terms as "a catalogue of every conceivable kind of error: data dredging, wishful thinking, truculent dogmatism, and now and again, outright fraud."<sup>7</sup>

Many years ago, when APLA was young, the founders of this organisation shared a vision. It was a vision of a

courageous organisation committed to the preservation of individual rights. An organisation that would act according to principles of what is right and just, not what is convenient or politically expedient. An organisation that would not only do things right, but do the right things for the right reasons. I am proud to say that APLA lives up to that vision.

We are currently involved in a battle on many fronts to preserve the rights of ordinary citizens. Although I have focussed on the situation in NSW, where the media debate has been particularly fierce, the threats to common law are nationwide. The forces that we oppose are powerful, politically connected, well funded, committed and above all, willing to distort the facts to attain their goals.

But they are afraid of us for one important reason. We have the truth on our side. ■

Rob Davis

**Footnotes:**

- <sup>1</sup> We are indebted to Dr Clive Wall for supplying this classic example of myth tarted up as fact.
- <sup>2</sup> Manhattan Institute, Judicial Studies Program, *Five Year Overview* (refer 1992 projects), 1993.
- <sup>3</sup> K. J. Chesebro, *Galileo's Retort: Peter Huber's Junk Scholarship*, American University Law Review, 1993, Vol. 42:4, p.1715.
- <sup>4</sup> Manhattan Institute, Judicial Studies Program, *Annual Budget and List of Contributors*, 1993.
- <sup>5</sup> Vol. 42.4, pp.1637-1726.
- <sup>6</sup> K. J. Chesebro, *Galileo's Retort: Peter Huber's Junk Scholarship*, American University Law Review, 1993, Vol. 42:4, p.1724.
- <sup>7</sup> K. J. Chesebro, *Galileo's Retort: Peter Huber's Junk Scholarship*, American University Law Review, 1993, Vol. 42:4, p.1726.